IOWA ADMINISTRATIVE BULLETIN

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PUBLISHED UNDER AUTHORITY OF IOWA CODE SECTIONS 2B.5 AND 17A.6

PREFACE

The Iowa Administrative Bulletin is published biweekly in pamphlet form pursuant to Iowa Code chapters 2B and 17A and contains Notices of Intended Action and rules adopted by state agencies.

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Regulatory Analyses; effective date delays and objections filed by the Administrative Rules Review Committee; Agenda for monthly Administrative Rules Review Committee meetings; and other materials deemed fitting and proper by the Administrative Rules Review Committee.

The Bulletin may also contain public funds interest rates [12C.6]; workers' compensation rate filings [515A.6(7)]; usury rates [535.2(3)"a"]; agricultural credit corporation maximum loan rates [535.12]; and regional banking—notice of application and hearing [524.1905(2)].

PLEASE NOTE: *Italics* indicate new material added to existing rules; ~~strike through letters~~ indicate deleted material.

KATHLEEN K. WEST, Administrative Code Editor
STEPHANIE A. HOFF, Deputy Editor

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CITATION of Administrative Rules

The Iowa Administrative Code shall be cited as (agency identification number) IAC (chapter, rule, subrule, lettered paragraph, or numbered subparagraph).

441 IAC 79	(Chapter)
441 IAC 79.1(249A)	(Rule)
441 IAC 79.1(1)	(Subrule)
441 IAC 79.1(1)"a"	(Paragraph)
441 IAC 79.1(1)"a"(1)	(Subparagraph)

The Iowa Administrative Bulletin shall be cited as IAB (volume), (number), (publication date), (page number), (ARC number).

IAB Vol. XII, No. 23 (5/16/90) p. 2050, ARC 872A

Schedule for Rule Making
2007

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Dec. 27 '06	Jan. 17 '07	Feb. 6 '07	Feb. 21 '07	Feb. 23 '07	Mar. 14 '07	Apr. 18 '07	July 16 '07
Jan. 12	Jan. 31	Feb. 20	Mar. 7	Mar. 9	Mar. 28	May 2	July 30
Jan. 26	Feb. 14	Mar. 6	Mar. 21	Mar. 23	Apr. 11	May 16	Aug. 13
Feb. 9	Feb. 28	Mar. 20	Apr. 4	Apr. 6	Apr. 25	May 30	Aug. 27
Feb. 23	Mar. 14	Apr. 3	Apr. 18	Apr. 20	May 9	June 13	Sept. 10
Mar. 9	Mar. 28	Apr. 17	May 2	May 4	May 23	June 27	Sept. 24
Mar. 23	Apr. 11	May 1	May 16	***May 16***	June 6	July 11	Oct. 8
Apr. 6	Apr. 25	May 15	May 30	June 1	June 20	July 25	Oct. 22
Apr. 20	May 9	May 29	June 13	June 15	July 4	Aug. 8	Nov. 5
May 4	May 23	June 12	June 27	***June 27***	July 18	Aug. 22	Nov. 19
May 16	June 6	June 26	July 11	July 13	Aug. 1	Sept. 5	Dec. 3
June 1	June 20	July 10	July 25	July 27	Aug. 15	Sept. 19	Dec. 17
June 15	July 4	July 24	Aug. 8	Aug. 10	Aug. 29	Oct. 3	Dec. 31
June 27	July 18	Aug. 7	Aug. 22	***Aug. 22***	Sept. 12	Oct. 17	Jan. 14 '08
July 13	Aug. 1	Aug. 21	Sept. 5	Sept. 7	Sept. 26	Oct. 31	Jan. 28 '08
July 27	Aug. 15	Sept. 4	Sept. 19	Sept. 21	Oct. 10	Nov. 14	Feb. 11 '08
Aug. 10	Aug. 29	Sept. 18	Oct. 3	Oct. 5	Oct. 24	Nov. 28	Feb. 25 '08
Aug. 22	Sept. 12	Oct. 2	Oct. 17	Oct. 19	Nov. 7	Dec. 12	Mar. 10 '08
Sept. 7	Sept. 26	Oct. 16	Oct. 31	Nov. 2	Nov. 21	Dec. 26	Mar. 24 '08
Sept. 21	Oct. 10	Oct. 30	Nov. 14	***Nov. 14***	Dec. 5	Jan. 9 '08	Apr. 7 '08
Oct. 5	Oct. 24	Nov. 13	Nov. 28	Nov. 30	Dec. 19	Jan. 23 '08	Apr. 21 '08
Oct. 19	Nov. 7	Nov. 27	Dec. 12	***Dec. 12***	Jan. 2 '08	Feb. 6 '08	May 5 '08
Nov. 2	Nov. 21	Dec. 11	Dec. 26	***Dec. 26***	Jan. 16 '08	Feb. 20 '08	May 19 '08
Nov. 14	Dec. 5	Dec. 25	Jan. 9 '08	Jan. 11 '08	Jan. 30 '08	Mar. 5 '08	June 2 '08
Nov. 30	Dec. 19	Jan. 8 '08	Jan. 23 '08	Jan. 25 '08	Feb. 13 '08	Mar. 19 '08	June 16 '08
Dec. 12	Jan. 2 '08	Jan. 22 '08	Feb. 6 '08	Feb. 8 '08	Feb. 27 '08	Apr. 2 '08	June 30 '08
Dec. 26	Jan. 16 '08	Feb. 5 '08	Feb. 20 '08	Feb. 22 '08	Mar. 12 '08	Apr. 16 '08	July 14 '08

PRINTING SCHEDULE FOR IAB

ISSUE NUMBER	SUBMISSION DEADLINE	ISSUE DATE
16	**Friday, January 12, 2007**	**January 31, 2007**
17	**Friday, January 26, 2007**	**February 14, 2007**
18	**Friday, February 9, 2007**	**February 28, 2007**

PLEASE NOTE:

Rules will not be accepted after **12 o'clock noon** on the Friday filing deadline days unless prior approval has been received from the Administrative Rules Coordinator's office.

If the filing deadline falls on a legal holiday, submissions made on the following Monday will be accepted.

*****Note change of filing deadline*****

SUBSCRIPTION INFORMATION

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July 1, 2006, to June 30, 2007	$328
October 1, 2006, to June 30, 2007	$246
January 1, 2007, to June 30, 2007	$164
April 1, 2007, to June 30, 2007	$ 82

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All checks should be made payable to the Treasurer, State of Iowa, and mailed to:

Attn: Nicole Navara
Legislative Services Agency
Miller Building
Des Moines, IA 50319
Telephone: (515)281-6766

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AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
ENVIRONMENTAL PROTECTION COMMISSION[567]		
Air quality, amendments to chs 21 to 23, 25, 34 IAB 12/6/06 **ARC 5599B**	Conference Rooms Air Quality Bureau 7900 Hickman Road Urbandale, Iowa	January 8, 2007 1 p.m.
Construction permits for sanitary sewer extensions, 64.2(10) IAB 1/3/07 **ARC 5638B**	Fifth Floor East Conference Rm. Wallace State Office Bldg. Des Moines, Iowa	January 24, 2007 10 a.m.
Liquid manure land application limit, 65.17, 65.112 IAB 1/3/07 **ARC 5636B**	Coralville Public Library 1401 Fifth St. Coralville, Iowa	February 6, 2007 5 p.m.
	Fifth Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	February 7, 2007 1 p.m.
	Meeting Room Carroll County Courthouse 114 E. 6th St. (Hwy 30) Carroll, Iowa	February 8, 2007 10 a.m.
Land application of sewage sludge, 67.1, 67.6 to 67.8 IAB 1/3/07 **ARC 5639B**	Fifth Floor East Conference Rm. Wallace State Office Bldg. Des Moines, Iowa	January 24, 2007 10 a.m.
Public water supply and wastewater treatment systems—operator certification, 81.7(3)“a” IAB 1/3/07 **ARC 5630B**	South Conference Rm. Suite I, DNR Water Supply Office 401 SW 7th St. Des Moines, Iowa	January 24, 2007 10 a.m.
Solid and nonhazardous waste, amend chs 101, 102, 104; rescind chs 111, 113; adopt ch 113 IAB 12/6/06 **ARC 5597B**	Suite D, DNR Field Office 1 909 West Main St. Manchester, Iowa	January 22, 2007 10 a.m.
	DNR Field Office 4 1401 Sunnyside Lane Atlantic, Iowa	January 24, 2007 10 a.m.
	5th Floor Conference Rooms Wallace State Office Bldg. Des Moines, Iowa	January 26, 2007 10 a.m.
Financial assurance for sanitary landfills, amendments to chs 103 to 106, 112, 114, 115, 118, 120 to 123 IAB 1/3/07 **ARC 5633B**	Fifth Floor West Conference Rm. Wallace State Office Bldg. Des Moines, Iowa	March 28, 2007 10 a.m. to 12 noon
HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605]		
Homeland security and emergency response teams, ch 12 IAB 12/20/06 **ARC 5624B**	Division Conference Room Building W-4, Camp Dodge Johnston, Iowa	January 11, 2007 1 p.m.

HUMAN SERVICES DEPARTMENT[441]

Home- and community-based habilitation services, 77.25, 78.27, 79.1 IAB 1/3/07 **ARC 5649B** (See also **ARC 5650B** herein)	Rooms 130 and 131 Iowa Medicaid Enterprise 100 Army Post Rd. Des Moines, Iowa	January 24, 2007 1:30 to 3 p.m.

INSURANCE DIVISION[191]

Unfair trade practices—indexed products training, 15.80 to 15.87 IAB 12/20/06 **ARC 5620B**	Division Conference Room 330 Maple St. Des Moines, Iowa	January 9, 2007 1 p.m.

LABOR SERVICES DIVISION[875]

Water heaters, 90.2, 90.4, 91.6, ch 95 IAB 12/20/06 **ARC 5619B**	Capitol View Room 1000 E. Grand Ave. Des Moines, Iowa	January 10, 2007 10 a.m. (If requested)

MEDICAL EXAMINERS BOARD[653]

Licensure and fees, amendments to chs 8 to 11, 17 IAB 1/3/07 **ARC 5631B**	Board Office, Suite C 400 SW 8th St. Des Moines, Iowa	January 23, 2007 3:15 p.m.
Mandatory reporting, 22.2, 22.4 IAB 1/3/07 **ARC 5628B**	Board Office, Suite C 400 SW 8th St. Des Moines, Iowa	January 23, 2007 3 p.m.
Grounds for discipline, 23.1(37) IAB 1/3/07 **ARC 5629B**	Board Office, Suite C 400 SW 8th St. Des Moines, Iowa	January 23, 2007 3 p.m.

NATURAL RESOURCE COMMISSION[571]

Commercial mussel harvest closed; sport harvesting, 87.1, 87.2 IAB 12/6/06 **ARC 5603B**	4th Floor Conf. Rm. Wallace State Office Bldg. Des Moines, Iowa	January 4, 2007 1 p.m.
Nonresident deer hunting, 94.1, 94.6, 94.8(2), 94.11 IAB 12/6/06 **ARC 5604B**	4th Floor E. Conf. Rm. Wallace State Office Bldg. Des Moines, Iowa	January 11, 2007 10:30 a.m.

PROFESSIONAL LICENSURE DIVISION[645]

Licensure of marital and family therapists and mental health counselors, 31.5(2), 31.7(2), 31.8 IAB 12/6/06 **ARC 5571B**	Fifth Floor Board Conf. Rm. Lucas State Office Bldg. Des Moines, Iowa	January 9, 2007 9 to 9:30 a.m.
Continuing education for massage therapists, ch 133 IAB 1/3/07 **ARC 5627B**	Fifth Floor Board Conf. Rm. Lucas State Office Bldg. Des Moines, Iowa	January 24, 2007 9 to 9:30 a.m.
Interpreter for the hearing impaired practitioners—licensure, continuing education, discipline, 361.1, 361.2, 361.5(3), 362.2(2), 363.2(31) IAB 12/20/06 **ARC 5615B**	Fifth Floor Board Conf. Rm. Lucas State Office Bldg. Des Moines, Iowa	January 9, 2007 9:30 to 10 a.m.

PUBLIC SAFETY DEPARTMENT[661]

Manufactured or mobile home retailers, manufacturers, and distributors, 372.5, 372.9 IAB 12/20/06 **ARC 5616B**	Fire Marshal Division Conf. Rm. Suite N 401 SW 7th St. Des Moines, Iowa	January 19, 2007 9:30 a.m.

UTILITIES DIVISION[199]

Filing of line and pole replacement data, 20.18(7), 25.3 IAB 12/20/06 **ARC 5612B**	Hearing Room 350 Maple St. Des Moines, Iowa	February 7, 2007 10 a.m.

Due to reorganization of state government by 1986 Iowa Acts, chapter 1245, it was necessary to revise the agency identification numbering system, i.e., the bracketed number following the agency name.

"Umbrella" agencies and elected officials are set out below at the left-hand margin in CAPITAL letters.

Divisions (boards, commissions, etc.) are indented and set out in lowercase type under their statutory "umbrellas."

Other autonomous agencies which were not included in the original reorganization legislation as "umbrella" agencies are included alphabetically in small capitals at the left-hand margin, e.g., BEEF INDUSTRY COUNCIL, IOWA[101].

The following list will be updated as changes occur:

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- Soil Conservation Division[27]

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BLIND, DEPARTMENT FOR THE[111]
CAPITAL INVESTMENT BOARD, IOWA[123]
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CIVIL RIGHTS COMMISSION[161]
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  - Architectural Examining Board[193B]
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HUMAN SERVICES DEPARTMENT[441]

ARC 5632B

EDUCATION DEPARTMENT[281]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)*"b."*

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby proposes to amend Chapter 120, "Early ACCESS Integrated System of Early Intervention Services," Iowa Administrative Code.

The proposed amendments clarify the definition of "parent" and clarify that a child's education records, as defined by the federal regulations that expand on the Family Educational Rights and Privacy Act in 34 CFR Part 99, may be transmitted between appropriate agencies without parental consent.

An agencywide waiver provision is provided in 281—Chapter 4.

Interested individuals may make written comments on the proposed amendments on or before January 23, 2007, at 4:30 p.m. Comments on the proposed amendments should be directed to Thomas Mayes, Bureau of Children, Family, and Community Services, Iowa Department of Education, Third Floor, Grimes State Office Building, Des Moines, Iowa 50319-0146; telephone (515)242-5614; E-mail thomas.mayes@iowa.gov; or fax (515)242-6019.

These amendments are intended to implement Iowa Code chapter 256B and 20 U.S.C. Sections 1400-ff.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule **281—120.4(34CFR303)** by rescinding the definition of "parent" and adopting the following **new** definition in lieu thereof:

"Parent" means (1) a biological or adoptive parent of a child; (2) a foster parent, unless state law, regulations, or contractual obligations with a state or local entity prohibit a foster parent from acting as a parent; (3) a guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child, but not the state if the child is a ward of the state; (4) a person acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom a child lives, or a person who is legally responsible for the child's welfare; or (5) a surrogate parent who has been appointed in accordance with 34 CFR 300.519 or 20 U.S.C. 1439(a)(5).

The following criteria shall be used to determine whether a party qualifies as a "parent":

a. Except as provided in paragraph "b," the biological or adoptive parent, when attempting to act as the parent under this chapter and when more than one party is qualified to act as a parent under this chapter, must be presumed to be the parent for purposes of these rules unless the biological or adoptive parent does not have legal authority to make educational decisions for the child.

b. If a judicial decree or order identifies a specific person or persons under (1) through (4) of the definition of "parent" to act as the parent of a child or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the parent for purposes of this definition.

c. A public or private agency involved in the education or care of a child shall not serve as a child's parent.

d. An employee or contractor with any public or private agency involved in the education or care of a child shall not serve as a parent in that employee or contractor's official capacity.

ITEM 2. Amend rule 281—120.59(34CFR303) as follows:

281—120.59(34CFR303) Transmittal of records. In order to facilitate the child's smooth transition to preschool or other appropriate services and to ensure continuity of services for the child, the applicable signatory agency or community partner must obtain written parental consent prior to transmitting any records of the child to the local education agency or other applicable agency or program, *unless the records are education records and the disclosure is authorized without parental consent under 34 CFR Part 99*. Records that may be transmitted include:

1. Evaluation and assessment information.
2. Copies of IFSPs that have been developed and implemented. [34 CFR 303.344(h)(2)(iii)]

ARC 5638B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)*"b."*

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 455B.173(3) and 455B.105(11), the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 64, "Wastewater Construction and Operation Permits," Iowa Administrative Code.

The proposed amendment to subrule 64.2(10) revises and clarifies the criteria for sewer extension construction permit approval and denial provisions. Sewer extension permits are issued by the DNR to allow communities and developers to construct new sanitary sewer collection and conveyance systems and to transport additional domestic, commercial, and industrial wastes to the wastewater treatment facilities for treatment and disposal. The amendment also modifies subrule 64.2(10) to include new permit approval and denial language and to update and simplify the rule.

Any interested person may make written suggestions or comments pertaining to the proposed amendment on or before January 26, 2007. Such written materials should be directed to Wayne Farrand, Wastewater Construction Section Supervisor, Iowa Department of Natural Resources, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319; fax (515)281-8895; telephone (515)281-8877; E-mail address wayne.farrand@dnr.state.ia.us.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

The Water Quality Bureau encourages stakeholders to utilize the following guidelines when submitting comments. These guidelines aid in accurately understanding and creating a record of your input.

1. Include your mailing address and contact information.
2. Please state if you are submitting comments as an individual or on behalf of a municipality, business, or organization.
3. Cite the specific rule(s) on which you are commenting.
4. Explain your views as clearly as possible by describing any assumptions, data, or technical information you utilized.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative language that you think would improve the specific rule(s) and explain why.

A public hearing will be held on January 24, 2007, at 10 a.m. in the Fifth Floor East Conference Room, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Natural Resources to advise of specific needs.

This amendment is intended to implement Iowa Code sections 455B.173(3) and 455B.105(11).

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Amend subrule 64.2(10) as follows:

64.2(10) Applications for *sanitary* sewer extension construction permits shall conform to the Iowa Standards for Sewer Systems, and approval shall be subject to the following:

~~a. In no case will construction permits be granted when the department determines that:~~

~~(1) The requested extension would be tributary to a sewer, lift station or sewage treatment facility which bypasses wastewater even though there was no rainfall or surface runoff due to melting snow within 48 hours prior to the bypassing.~~

~~(2) The treatment works' effluent has exceeded 150 mg/l BOD_5 at least once per month for 4 months within the last 12 months, when discharge occurred; or~~

~~(3) The treatment works' efficiency is less than 25 percent at least once per month for 4 months within the last 12 months when discharge occurred.~~

~~b. A sanitary sewer extension construction permit for a public treatment system constructed with grants offered before January 1, 1973, or under a construction permit issued before January 1, 1973, will be denied if, at the time of application:~~

~~(1) The treatment works' effluent has exceeded 100 mg/l BOD_5 at least once per month for 4 months within the last 12 months when discharge occurred; or~~

~~(2) The treatment works efficiency is less than 50 percent at least once per month for 4 months within the last 12 months when discharge occurred.~~

~~If the system is operating under a compliance schedule which is being adhered to, or the applicant can demonstrate that the problem has been identified, the planning completed, and corrective measures initiated, construction permits may be granted to serve not more than a cumulative total 10 percent increase in population equivalent over the load existing at the time the violations of 64.2(10)"b"(1) or (2) were identified.~~

~~c~~ *a.* A sanitary sewer extension construction permit ~~for a treatment system constructed with grant funds offered after December 31, 1972, or a public nongrant treatment system constructed under a construction permit issued after December 31, 1972, will~~ *may* be denied if, at the time of application, ~~either of the following operation permit violations exist:~~

~~(1) Flow limitations have been exceeded at least once per month for more than 4 months within the last 12 months; or~~

~~(2) BOD_5 limitations have been exceeded at least once per month for more than 4 months within the last 12 months when discharge occurred.~~ *the treatment facility treating wastewater from the proposed sewer is not in substantial compliance with its operating permit or if the treatment facility receives wastes in volumes or quantities that exceed its design capacity and interfere with its operation or performance.*

If the applicant ~~can show that the influent dry weather flow and influent dry weather BOD_5 do not exceed the plant design capacity and the system~~ is operating under a compliance schedule which is being adhered to *that leads to resolution of the substantial compliance issues* or *if* the applicant can demonstrate that the problem has been identified, the planning completed, and corrective measures initiated, *then the* construction ~~permits~~ *permit* may be granted ~~to increase the total load to not more than the design organic and dry weather hydraulic capacity of the treatment works~~.

~~d~~ *b.* A sanitary sewer extension construction permit ~~for any public treatment system will~~ *may* be denied if bypassing has occurred at the treatment ~~plant~~ *facility*, except when any of the following conditions are being met:

(1) The bypassing is due to a combined sewer system, *and the facility is in compliance with a long-term CSO control plan approved by the department.*

(2) The bypassing occurs as a result of a storm with an intensity or duration greater than that of a storm with a return period of five years. (See App. A~~)~~*)*

(3) The department determines that timely actions are being taken to ~~correct~~ *eliminate* the bypassing.

~~e. A sanitary sewer extension construction permit for any private treatment system will be denied if the effluent quality does not comply with 567—Chapter 62, unless the owner of the system agrees to a schedule which requires the treatment facility to be upgraded so that the effluent quality limitations will be met by the time the proposed sewer extension is connected.~~

~~f~~ *c.* A sanitary sewer extension construction permit ~~will~~ *may* be denied if an existing downstream sewer is or will be overloaded or surcharged, resulting in bypassing, flooded basements, or overflowing manholes, unless:

(1) The bypassing or flooding is the result of a precipitation event with an intensity or duration greater than that of a storm with a return period of two years. (See App. A*); or

(2) The system is under full-scale facility planning (I/I and SSES) ~~or~~ *and* the applicant provides ~~an acceptable~~ *a* schedule *that is approved by the department* for rehabilitating the system to the extent necessary to handle the additional loadings.

~~g~~ *d.* Potential loads. Construction permits may be granted for sanitary sewer extensions that are sized to serve future loads that would exceed the capacity of the existing treatment works. However, initial connections shall be limited to the

load that can be handled by the existing treatment works. The department will determine this load and advise the applicant of the limit. This limitation will be in effect until additional treatment capacity has been constructed.

ARC 5636B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"*b*."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 459.103 and 2005 Iowa Code Supplement section 459A.104, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 65, "Animal Feeding Operations," Iowa Administrative Code.

For confinement feeding operations or open feedlot operations that are required to submit manure/nutrient management plans, the proposed amendments would limit the application of liquid manure, process wastewater or settled open feedlot effluent to 100 pounds of available nitrogen per acre to land that is planted to soybeans or that will be planted to soybeans the next crop season. Effective five years after the proposed amendments become effective, the application of liquid manure, process wastewater or settled open feedlot effluent to such land would be prohibited unless the Commission determines that available scientific evidence justifies alternative action.

Any interested person may make written suggestions or comments on the proposed amendments on or before February 8, 2007. Written comments should be directed to Gene Tinker, Iowa Department of Natural Resources, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0034; fax (515)281-8895; E-mail gene.tinker@dnr.state.ia.us.

Also, there will be public hearings as follows, at which time persons may present their views either orally or in writing:

February 6, 2007, 5 p.m.
Coralville Public Library
1401 Fifth Street
Coralville, Iowa

February 7, 2007, 1 p.m.
Wallace State Office Building
Fifth Floor Conference Room
502 E. 9th Street
Des Moines, Iowa

February 8, 2007, 10 a.m.
Carroll County Courthouse
Courthouse Meeting Room
114 E. 6th Street (Hwy 30)
Carroll, Iowa

At the hearings, people will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

Any persons who intend to attend the public hearing and have special requirements such as those related to hearing or mobility impairments should contact the Department of Natural Resources and advise of specific needs.

These amendments are intended to implement Iowa Code sections 459.103 and 459.312, and 2005 Iowa Code Supplement sections 459A.104 and 459A.208.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend paragraph **65.17(18)"c"** as follows:

c. Nitrogen-based application rates shall be based on the optimum crop yields as determined in 65.17(6) and crop nitrogen usage rate factor values in Table 4 at the end of this chapter or other credible sources. *However, subject to the prohibition in 65.17(20), liquid manure applied to land that is currently planted to soybeans or to land where the current crop has been harvested that will be planted to soybeans the next crop season shall not exceed 100 pounds of available nitrogen per acre. Further, the 100 pounds per acre application limitation in the previous sentence does not apply on or after June 1 of each year; in that event 65.17(6) and Table 4 would apply as provided in the first sentence of this paragraph.*

ITEM 2. Amend rule 567—65.17(459) by adopting the following **new** subrule:

65.17(20) Liquid manure on land planted to soybeans. Effective [insert date five years after effective date of this amendment], the owner of a confinement feeding operation that is required to submit a manure management plan shall not apply liquid manure to land that is currently planted to soybeans or to land where the current crop has been harvested that will be planted to soybeans the next crop season. Not later than six months prior to [insert the effective date of the ban in this subrule], the commission shall review the available scientific evidence and determine whether any further or alternative action is necessary.

ITEM 3. Amend subparagraph **65.112(8)"a"(2)** as follows:

(2) Calculations necessary to determine the land area required for the application of manure, process wastewater and open feedlot effluent from an open feedlot operation based on nitrogen or phosphorus use levels (as determined by phosphorus index) in order to obtain optimum crop yields according to a crop schedule specified in the nutrient management plan, and according to requirements specified in 65.17(4). *The 100 pounds of available nitrogen per acre limitation specified in 65.17(18)"c" (applicable to open feedlot operations because of requirements in 65.17(4)) pertaining to liquid manure applied to land currently planted to soybeans or to land where a soybean crop is planned applies only to liquid manure, process wastewater or settled open feedlot effluent.*

ITEM 4. Amend rule 567—65.112(459A) by adopting the following **new** subrule:

65.112(11) Settled open feedlot effluent on land planted to soybeans. Effective [insert date five years after effective date of this amendment], the owner of an open feedlot operation that is required to submit a nutrient management plan shall not apply liquid manure, process wastewater or settled open feedlot effluent to land that is currently planted to soybeans

or to land where the current crop has been harvested that will be planted to soybeans the next crop season. Not later than six months prior to [insert the effective date of the ban in this subrule], the commission shall review the available scientific evidence and determine whether any further or alternative action is necessary.

ARC 5639B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"*b*."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 455B.173, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 67, "Standards for the Land Application of Sewage Sludge," Iowa Administrative Code.

The primary purpose of these amendments is to adopt into the state's administrative rules changes to the federal regulations that were amended as a result of EPA's reconsiderations of certain issues remanded by the U.S. Court of Appeals for additional justification or modification. These amendments delete the current land application pollutant limit for chromium and change the land application pollutant concentration limits for selenium and molybdenum. These amendments also change an adoption by reference date and update an address.

Any interested person may make written suggestions or comments pertaining to the proposed amendments on or before January 26, 2007. Such written materials should be directed to Corey McCoid, Water Quality Bureau, Iowa Department of Natural Resources, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319; fax (515) 281-8895; telephone (515)281-0675; E-mail address corey.mccoid@dnr.state.ia.us.

The Water Quality Bureau encourages stakeholders to utilize the following guidelines when submitting comments. These guidelines aid in accurately understanding and creating a record of your input.

1. Include your mailing address and contact information.
2. Please state if you are submitting comments as an individual or on behalf of a municipality, business, or organization.
3. Cite the specific rule(s) on which you are commenting.
4. Explain your views as clearly as possible by describing any assumptions, data, or technical information you utilized.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative language that you think would improve the specific rule(s) and explain why.

A public hearing will be held on January 24, 2007, at 10 a.m. in the Fifth Floor East Conference Room, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of these amendments.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Natural Resources to advise of specific needs.

These amendments are intended to implement Iowa Code section 455B.174.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule 67.1(1) as follows:

67.1(1) General. This chapter establishes standards for the land application of sewage sludge generated during the treatment of domestic sewage in a treatment works. This chapter applies to any person who prepares sewage sludge (generator), to any person who applies sewage sludge to the land (applicator), and to sewage sludge applied to the land. No person shall land apply sewage sludge through any practice for which requirements are established in this chapter except in accordance with such requirements.

In areas that are not specifically addressed in this chapter, but which are addressed in federal regulations at 40 CFR Part 503 as ~~adopted February 19, 1993~~ *amended through August 4, 1999*, the federal ~~regulation~~ *regulations* shall apply under this rule~~,~~ and are hereby adopted by reference under this chapter.

On a case-by-case basis, this department may impose requirements for the land application of sewage sludge in addition to or more stringent than the requirements in this chapter when necessary to protect public health and the environment from any adverse effect of a pollutant in the sewage sludge.

ITEM 2. Amend subrule 67.6(1) as follows:

67.6(1) Any treatment facility proposing to land apply sewage sludge shall apply for a permit for land application of sewage sludge on a properly completed form supplied by the department. Application forms may be obtained from:

Environmental ~~Protection~~ *Services* Division
Iowa Department of Natural Resources
~~Henry A.~~ Wallace *State Office* Building
~~900 East Grand~~ *502 East 9th Street*
Des Moines, Iowa 50319
http://www.iowadnr.com/

Properly completed forms should be submitted in accordance with the instructions for the form.

a. to c. No change.

ITEM 3. Amend paragraph **67.7(1)"a"** as follows:

a. The concentration of each pollutant in the sewage sludge shall not exceed the concentration for the pollutant in Table 1.

TABLE 1—POLLUTANT CONCENTRATIONS

Pollutant	Monthly Average Concentration ~~(~~milligrams per kilogram~~)~~*
Arsenic	41
Cadmium	39
~~Chromium~~	~~1200~~
Copper	1500
Lead	300
Mercury	17
~~Molybdenum~~	~~75~~
Nickel	420
Selenium	100
Zinc	2800

*Dry weight basis

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

ITEM 4. Amend paragraph **67.8(1)"a"** as follows:

a. The concentration of any pollutant in the sewage sludge shall not exceed the ceiling concentration for the pollutant in Table 3.

TABLE 3—CEILING CONCENTRATIONS

Pollutant	Ceiling Concentration milligrams per kilogram *
Arsenic	75
Cadmium	85
~~Chromium~~	~~3000~~
Copper	4300
Lead	840
Mercury	57
Molybdenum	75
Nickel	420
Selenium	100
Zinc	7500

*Dry weight basis

ITEM 5. Amend paragraph **67.8(2)"b"** as follows:

b. Land application sites~~,~~ accepting Class II sewage sludges not meeting pollutant concentrations listed in Table 1 of ~~567—~~*subrule* 67.7(1)~~,~~ are ~~subjected~~ *subject* to the cumulative pollutant loading rates listed in Table 4.

TABLE 4—CUMULATIVE POLLUTANT LOADING RATES

Pollutant	Cumulative Pollutant kilograms per hectare	Loading Rate pounds per acre
Arsenic	41	36
Cadmium	39	34
~~Chromium~~	~~3000~~	~~2670~~
Copper	1500	1335
Lead	300	267
Mercury	17	15
~~Molybdenum~~	~~75~~	~~66~~
Nickel	420	373
Selenium	100	89
Zinc	2800	2490

ITEM 6. Amend **567—Chapter 67** by adding the following **new** implementation sentence at the end thereof:

These rules are intended to implement Iowa Code section 455B.174.

ARC 5630B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"*b*."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 455B.213 and 455B.223, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 81, "Operator Certification: Public Water Supply Systems and Wastewater Treatment Systems," Iowa Administrative Code.

The proposed amendment to subrule 81.7(3), paragraph "a," will allow more operators the opportunity to qualify for the highest grade examination (Grade IV) through the substitution of experience. This change will provide for additional qualified Iowa operators, who are needed for succession as current operators retire.

Any person or agency may submit written comments concerning this proposed amendment. The comments shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments.
2. Reference the paragraph number and catchwords of the proposed amendment, as given in this Notice, that is the subject of the comments.
3. Be addressed to Corey McCoid, Water Quality Bureau, Iowa Department of Natural Resources, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319; fax (515)281-8895; E-mail corey.mccoid@dnr.state.ia.us.
4. Be received no later than January 26, 2007.

A public hearing is scheduled for Wednesday, January 24, 2007, at 10 a.m. in the South Conference Room at the IDNR Water Supply office at 401 S.W. 7th Street, Suite I, Des Moines, Iowa.

This amendment is intended to implement Iowa Code sections 455B.213 and 455B.223.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Amend paragraph **81.7(3)"a"** as follows:

a. Substitution of experience for education.

(1) One year of operating experience in a Grade II or higher position may be substituted for one year of post-high school education for Grade III certification up to one-half *of* the post-high school education requirement.

(2) One year of operating experience in a Grade III or higher position may be substituted for one year of post-high school education for Grade IV certification up to one-half *of* the post-high school education requirement.

(3) Two years of direct responsible charge experience in a Grade III or higher position may be substituted for one year of directly related post-high school education for Grade IV certification up to three-fourths of the post-high school education requirement.

~~(3)~~ *(4)* That portion of experience which is applied toward substitution for education cannot also be used for experience.

ARC 5633B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"*b*."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 455B.304(8), the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 103, "Sanitary Landfills: Coal Combustion Residue," Chap-

ter 104, "Sanitary Disposal Projects with Processing Facilities," Chapter 105, "Organic Materials Composting Facilities," Chapter 106, "Citizen Convenience Centers and Transfer Stations," Chapter 112, "Sanitary Landfills: Biosolids Monofills," Chapter 114, "Sanitary Landfills: Construction and Demolition Wastes," Chapter 115, "Sanitary Landfills: Industrial Monofills," Chapter 118, "Discarded Appliance Demanufacturing," Chapter 120, "Landfarming of Petroleum Contaminated Soil," Chapter 121, "Land Application of Wastes," Chapter 122, "Cathode Ray Tube Device Recycling," and Chapter 123, "Regional Collection Centers and Mobile Unit Collection and Consolidation Centers," Iowa Administrative Code.

These new and amended rules are intended to fully implement the financial assurance requirements for all sanitary landfills as required by Iowa Code section 455B.304(8) and Supplement section 455B.306(9).

In 1986, the Code of Iowa was amended to require financial assurance requirements for all sanitary disposal projects. Financial assurance requirements for municipal solid waste landfills were adopted by the Commission in 1994 (567—Chapter 111). Since 2002, financial assurance requirements have been adopted for composting facilities (567—Chapter 105) and transfer stations (567—Chapter 106). This rule making is intended to implement the statutorily required financial assurance requirements for the remaining categories of sanitary disposal projects. The proposed amendments are based upon the existing rules for municipal solid waste landfills, composting facilities, and transfer stations.

The proposed amendments apply to coal combustion residue landfills, solid waste processing facilities, solid waste composting facilities, solid waste transfer stations, biosolids monofill sanitary landfills, construction and demolition waste landfills, appliance demanufacturing facilities, persons engaged in the permitted land application of solid wastes and petroleum-contaminated soils, cathode ray tube collection facilities, and household hazardous waste regional collection centers. Exceptions to the new financial assurance requirements are proposed for facilities to which the current financial assurance requirements are applicable. Financial assurance mechanisms should already be in place for such facilities.

Any interested person may make written suggestions or comments pertaining to the proposed amendments on or before 4:30 p.m. on March 28, 2007. Such written materials should be directed to Alex Moon, Energy and Waste Management Bureau, Iowa Department of Natural Resources, 502 East 9th Street, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-8895; or alex.moon@dnr.state.ia.us. Persons wishing to convey their views orally should contact Alex Moon at (515)281-6807.

The Energy and Waste Management Bureau encourages stakeholders to utilize the following guidelines when submitting comments. These guidelines aid the Bureau in accurately understanding and creating a record of your input.

1. Include your mailing address and contact information.
2. Please state if you are submitting comments on behalf of a business, organization or as an individual.
3. Cite the specific rule(s) on which you are commenting.
4. Explain your views as clearly as possible by describing any assumptions, data, or technical information you utilized.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative language that you think would improve the specific rule(s) and explain why.

A public hearing will be held on March 28, 2007, from 10 a.m. until 12 noon in the Fifth Floor West Conference Room of the Wallace State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend the public hearing and have special requirements, such as hearing or mobility impairments, should contact the Department of Natural Resources to advise of specific needs.

These amendments are intended to implement Iowa Code section 455B.304 and Supplement section 455B.306.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend 567—Chapter 103 by adopting the following **new** rule:

567—103.3(455B) Coal combustion residue sanitary landfill financial assurance.

103.3(1) Purpose. The purpose of this rule is to implement Iowa Code section 455B.304(8) and Supplement section 455B.306(9) by providing the criteria for establishing financial assurance for closure, postclosure and corrective action at coal combustion residue sanitary landfills (CCR landfills).

103.3(2) Applicability. The requirements of this rule apply to all owners and operators of CCR landfills accepting waste as of [the effective date of this rule] except owners or operators that are state or federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States.

103.3(3) Financial assurance for closure. The owner or operator of a CCR landfill must establish financial assurance for closure in accordance with the criteria in this rule. The owner or operator must provide continuous coverage for closure until released from this requirement by demonstrating compliance with subrule 103.1(5). Proof of compliance pursuant to paragraphs 103.3(3)"a" through "e" must be submitted by the owner or operator yearly by April 1 and approved by the department.

a. The owner or operator shall submit the current version of department Form 542-8090, Sanitary Landfill Financial Assurance Report Form, which contains, but is not limited to, the amount of the financial assurance, the annual financial statement required by Iowa Code Supplement sections 455B.306(9)"e" and 455B.306(7)"c," and the current balances of the closure and postclosure accounts at the time of submittal as required by Iowa Code Supplement section 455B.306(9)"b."

b. The owner or operator shall submit a copy of the financial assurance instruments or the documents establishing the financial assurance instruments in an amount equal to or greater than the amount specified in subrule 103.3(9). Documentation for the mechanism(s) used to demonstrate financial assurance shall contain, at a minimum, the items required to be submitted as specified in paragraphs 103.3(6)"a" to "i."

c. The owner or operator shall submit a detailed written estimate, in current dollars, certified by an Iowa-licensed professional engineer, of the cost of hiring a third party to close the CCR landfill in accordance with the closure/postclosure plan as required by subrule 103.1(5). Such esti-

mate must be available at any time during the active life of the landfill.

(1) The cost estimate must equal the cost of closing the CCR landfill at any time during the permitted life of the facility when the extent and manner of its operation would make closure the most expensive.

(2) The costs contained in the third-party estimate for closure must be accurate and reasonable when compared to the cost estimates used by other similarly situated landfills in Iowa.

(3) During the active life of the CCR landfill, the owner or operator must annually adjust the closure cost estimate for inflation.

(4) The owner or operator must, annually or at the time of application for a permit amendment that increases closure costs, whichever occurs first, increase the closure cost estimate and the amount of financial assurance provided if changes to the closure plan or CCR landfill conditions increase the maximum cost of closure at any time during the remaining active life of the facility.

(5) The owner or operator may reduce the amount of financial assurance for closure if the most recent estimate of the maximum cost of closure at any time during the active life of the facility is less than the amount of financial assurance currently provided. Prior to the reduction, the owner or operator must submit to the department the justification for the reduction of the closure cost estimate and the updated documentation required by paragraphs 103.3(3)"a" through "e" and receive department approval for the reduction. Approval or denial shall be issued within 30 days of receipt of the reduction request.

(6) The third-party estimate submitted to the department must include the site area subject to closure and account for at least the following factors determined by the department to be minimal necessary costs for closure:

1. Closure and postclosure plan document revisions;
2. Site preparation, earthwork and final grading;
3. Drainage control culverts, piping and structures;
4. Erosion control structures, sediment ponds and terraces;
5. Final cap construction;
6. Cap vegetation soil placement;
7. Cap seeding, mulching and fertilizing;
8. Monitoring well and piezometer modifications;
9. Leachate system cleanout and extraction well modifications;
10. Monitoring well installations and abandonments;
11. Facility modifications to effect closed status;
12. Engineering and technical services;
13. Legal, financial and administrative services; and
14. Closure compliance certifications and documentation.

d. For CCR landfills owned by local governments, the owner or operator shall submit to the department a copy of the owner's or operator's most recent annual audit report in the form prescribed by the office of the auditor of the state of Iowa.

e. Privately held CCR landfills shall submit an affidavit from the owner or operator indicating that a yearly review has been performed by a certified public accountant to determine whether the privately owned landfill is in compliance with this rule. The affidavit shall state the name of the certified public accountant, the dates and conclusions of the review, and the steps taken to rectify any deficiencies identified by the accountant.

103.3(4) Financial assurance for postclosure. The owner or operator of a CCR landfill must establish financial assurance for the costs of postclosure in accordance with the criteria in this rule. The owner or operator must provide continuous coverage for postclosure until released from this requirement by demonstrating compliance with the closure/postclosure plan and the closure permit. Proof of compliance pursuant to paragraphs 103.3(4)"a" through "e" must be submitted by the owner or operator yearly by April 1 and approved by the department.

a. The owner or operator shall submit the current version of department Form 542-8090, Sanitary Landfill Financial Assurance Report Form, which contains, but is not limited to, the amount of the financial assurance, the annual financial statement required by Iowa Code Supplement sections 455B.306(9)"e" and 455B.306(7)"c," and the current balances of the closure and postclosure accounts required by Iowa Code Supplement section 455B.306(9)"b."

b. The owner or operator shall submit a copy of the documents establishing a financial assurance instrument in an amount equal to or greater than the amount specified in subrule 103.3(9). Documentation for the mechanism(s) used to demonstrate financial assurance shall contain, at a minimum, the items required to be submitted as specified in paragraphs 103.3(6)"a" to "i."

c. The owner or operator shall submit a detailed written estimate, in current dollars, certified by an Iowa-licensed professional engineer, of the cost of hiring a third party to conduct postclosure for the CCR landfill in compliance with the closure/postclosure plan developed pursuant to subrule 103.1(5). The cost estimate must account for the total cost of conducting postclosure, as described in the plan, for the entire postclosure period.

(1) The cost estimate for postclosure must be based on the most expensive costs of postclosure during the entire postclosure period.

(2) The costs contained in the third-party estimate for postclosure must be accurate and reasonable when compared to the cost estimates used by other similarly situated landfills in Iowa.

(3) During the active life of the CCR landfill and during the postclosure period, the owner or operator must annually adjust the postclosure cost estimate for inflation.

(4) The owner or operator must, annually or at the time of application for a permit amendment that increases postclosure costs, whichever occurs first, increase the estimate and the amount of financial assurance provided if changes in the postclosure plan or CCR landfill conditions increase the maximum cost of postclosure.

(5) The owner or operator may reduce the amount of financial assurance for postclosure if the most recent estimate of the maximum cost of postclosure beginning at any time during the active life of the facility is less than the amount of financial assurance currently provided. Prior to the reduction, the owner or operator must submit to the department the justification for the reduction of the postclosure cost estimate and the updated documentation required by paragraphs 103.3(4)"a" through "e" and must receive department approval for the reduction. Approval or denial shall be issued within 30 days of receipt of the reduction request.

(6) The third-party estimate submitted to the department must include the site area subject to postclosure and account for at least the following factors determined by the department to be minimal necessary costs for postclosure:

1. General site facilities, access roads and fencing maintenance;
2. Cap and vegetative cover maintenance;
3. Drainage and erosion control systems maintenance;

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

4. Groundwater to waste separation systems maintenance;
5. Groundwater and surface water monitoring systems maintenance;
6. Groundwater and surface water quality monitoring and reports;
7. Groundwater monitoring systems performance evaluations and reports;
8. Leachate control systems maintenance;
9. Leachate management, transportation and disposal;
10. Leachate control systems performance evaluations and reports;
11. Facility inspections and reports;
12. Engineering and technical services;
13. Legal, financial and administrative services; and
14. Financial assurance, accounting, audits and reports.

d. For CCR landfills owned by local governments, the owner or operator shall submit to the department a copy of the owner's or operator's most recent annual audit report in the form prescribed by the office of the auditor of the state of Iowa.

e. Privately held CCR landfills shall submit an affidavit from the owner or operator indicating that a yearly review has been performed by a certified public accountant to determine whether the privately owned landfill is in compliance with this rule. The affidavit shall state the name of the certified public accountant, the dates and conclusions of the review, and the steps taken to rectify any deficiencies identified by the accountant.

103.3(5) Financial assurance for corrective action.

a. An owner or operator required to undertake corrective action must have a detailed written estimate, in current dollars, prepared by an Iowa-licensed professional engineer, of the cost of hiring a third party to perform the required corrective action. The estimate must account for the total costs of the activities described in the approved corrective action plan for the entire corrective action period. The owner or operator must submit to the department the estimate and financial assurance documentation within 30 days of department approval of the corrective action plan.

(1) The owner or operator must annually adjust the estimate for inflation until the corrective action plan is completed.

(2) The owner or operator must increase the cost estimate and the amount of financial assurance provided if changes in the corrective action plan or CCR landfill conditions increase the maximum cost of corrective action.

(3) The owner or operator may reduce the amount of the cost estimate and the amount of financial assurance provided if the estimate exceeds the maximum remaining costs of the remaining corrective action. The owner or operator must submit to the department the justification for the reduction of the cost estimate and documentation of financial assurance.

b. The owner or operator of a CCR landfill required to undertake a corrective action plan must establish financial assurance for the most recent corrective action plan by one of the mechanisms prescribed in subrule 103.3(6). The owner or operator must provide continuous coverage for corrective action until released from financial assurance requirements by demonstrating compliance with the following:

(1) Upon completion of the remedy, the owner or operator must submit to the department a certification of compliance with the approved corrective action plan. The certification must be signed by the owner or operator and by an Iowa-licensed professional engineer.

(2) Upon department approval of completion of the corrective action remedy, the owner or operator shall be released from the requirements for financial assurance for corrective action.

103.3(6) Allowable financial assurance mechanisms. The mechanisms used to demonstrate financial assurance as required by Iowa Code Supplement section 455B.306(9)"a" must ensure that the funds necessary to meet the costs of closure, postclosure, and corrective action for known releases will be available whenever the funds are needed. Owners or operators must choose from options in paragraphs 103.3(6)"a" to "i."

a. Trust fund.

(1) An owner or operator may demonstrate financial assurance for closure, postclosure, or corrective action, whichever is applicable, by establishing a trust fund which conforms to the requirements of this subrule. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. A copy of the trust agreement must be submitted pursuant to subrules 103.3(3), 103.3(4), and 103.3(5) and placed in the facility's official files.

(2) Payments into the trust fund must be made annually by the owner or operator over ten years or over the remaining life of the CCR landfill, whichever is shorter, in the case of a trust fund for closure or postclosure; or over one-half of the estimated length of the corrective action plan in the case of response to a known release. This period is referred to as the pay-in period.

(3) For a trust fund used to demonstrate financial assurance for closure and postclosure, the first payment into the fund must be at least equal to the amount specified in subrule 103.3(9) for closure or postclosure divided by the number of years in the pay-in period as defined in subparagraph 103.3(6)"a"(2). The amount of subsequent payments must be determined by the following formula:

$$\text{Payment} = \frac{CE - CB}{Y}$$

where CE is the amount specified in 103.3(9) for closure or postclosure (updated for inflation or other changes), CB is the current balance of the trust fund, and Y is the number of years remaining in the pay-in period.

(4) For a trust fund used to demonstrate financial assurance for corrective action, the first payment into the trust fund must be at least equal to one-half of the current cost estimate for corrective action divided by the number of years in the corrective action pay-in period as defined in subparagraph 103.3(6)"a"(2). The amount of subsequent payments must be determined by the following formula:

$$\text{Payment} = \frac{RB - CV}{Y}$$

where RB is the most recent estimate of the required trust fund balance for corrective action, which is the total cost that will be incurred during the second half of the corrective action period, CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(5) The initial payment into the trust fund must be made before the initial receipt of waste or before the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure; or no later than 120 days after the corrective action remedy has been approved by the department.

(6) The owner or operator, or other person authorized to conduct closure, postclosure, or corrective action activities, may request reimbursement from the trustee for these expen-

ditures, including partial closure, as the expenditures are incurred. Requests for reimbursement will be granted by the trustee only if sufficient funds are remaining in the trust fund to cover the remaining costs of closure, postclosure, or corrective action and if justification and documentation of the costs are placed in the operating record. The owner or operator must submit to the department documentation of the justification for reimbursement and verification that reimbursement has been received.

(7) The trust fund may be terminated by the owner or operator only if the owner or operator substitutes alternative financial assurance as specified in this rule or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

(8) After the pay-in period has been completed, the trust fund shall be adjusted annually to correct any deficiency of the fund with respect to the adjusted cost estimate and may be adjusted annually should the balance in the fund exceed the adjusted cost estimate.

b. Surety bond guaranteeing payment or performance.

(1) An owner or operator may demonstrate financial assurance for closure or postclosure by obtaining a payment or performance surety bond which conforms to the requirements of this subrule. An owner or operator may demonstrate financial assurance for corrective action by obtaining a performance bond which conforms to the requirements of this subrule. The bond must be effective before the initial receipt of waste or before the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure; or no later than 120 days after the corrective action remedy has been approved by the department. The owner or operator must submit a copy of the bond to the department and keep a copy in the facility's official files. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury. The state shall not be considered a party to the surety bond.

(2) The penal sum of the bond must be in an amount at least equal to the amount specified in subrule 103.3(9) for closure and postclosure or corrective action, whichever is applicable.

(3) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond and also upon notice from the department pursuant to subparagraph 103.3(6)"b"(6).

(4) The owner or operator must establish a standby trust fund. The standby trust fund must meet the requirements of paragraph 103.3(6)"a" except the requirements for initial payment and subsequent annual payments specified in subparagraphs 103.3(6)"a"(2) through (5).

(5) Payments made under the terms of the bond will be deposited by the surety directly into the standby trust fund. Payments from the trust fund must be approved by the trustee and the department.

(6) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the department 120 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternative financial assurance, notice from the surety of withdrawal of the cancellation, or proof of a deposit into the standby trust fund of a sum equal to the amount of the bond. If the owner or operator has not complied with this subparagraph within the 60-day time period, this shall constitute a failure to perform and the department shall notify the surety, prior to the expiration of the 120-day notice period, that such a failure has occurred.

(7) The bond must be conditioned upon faithful performance by the owner or operator of all closure, postclosure, or corrective action requirements of the Code of Iowa and this rule. A failure to comply with subparagraph 103.3(6)"b"(6) shall also constitute a failure to perform under the terms of the bond.

(8) Liability under the bond shall be for the duration of the operation, closure, and postclosure period.

(9) The owner or operator may cancel the bond only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

c. Letter of credit.

(1) An owner or operator may demonstrate financial assurance for closure, postclosure, or corrective action, whichever is applicable, by obtaining an irrevocable standby letter of credit which conforms to the requirements of this paragraph. The letter of credit must be effective before the initial receipt of waste or before the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure; or no later than 120 days after the corrective action plan is approved by the department. The owner or operator must submit to the department a copy of the letter of credit and place a copy in the facility's official files. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

(2) A letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the name and address of the facility, and the amount of funds assured, must be included with the letter of credit submitted to the department and placed in the facility's files.

(3) The letter of credit must be irrevocable and issued for a period of at least one year in an amount at least equal to the amount specified in subrule 103.3(9) for closure, postclosure or corrective action, whichever is applicable. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the owner or operator and to the department 120 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternative financial assurance, notice of withdrawal of cancellation, or proof of a deposit of a sum equal to the amount of the letter of credit into the closure and postclosure accounts established pursuant to Iowa Code Supplement section 455B.306(9)"b." If the owner or operator has not complied with this subparagraph within the 60-day time period, the issuer of the letter of credit shall deposit a sum equal to the amount of the letter of credit into the closure and postclosure accounts established by the owner or operator pursuant to Iowa Code Supplement section 455B.306(9)"b." The provision of funds by the issuer of the letter of credit shall be considered an issuance of a loan to the owner or operator, and the terms of that loan shall be governed by the letter of credit or subsequent agreement between those parties. The state shall not be considered a party to this credit transaction.

(4) The owner or operator may cancel the letter of credit only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

d. Insurance.

(1) An owner or operator may demonstrate financial assurance for closure, postclosure, or corrective action by obtaining insurance which conforms to the requirements of this paragraph. The insurance must be effective before the initial receipt of waste or prior to cancellation of an alternative financial assurance, in the case of closure and postclosure; or no later than 120 days after the corrective action plan has been approved by the department. At a minimum, the insurer must be licensed to transact the business of insurance, or be eligible to provide insurance as an excess or surplus lines insurer, in one or more states. The owner or operator must submit to the department a copy of the insurance policy and retain a copy in the facility's official files.

(2) The closure or postclosure insurance policy must guarantee that funds will be available to close the CCR landfill whenever final closure occurs or to provide postclosure for the CCR landfill whenever the postclosure period begins, whichever is applicable. The policy must also guarantee that once closure or postclosure begins, the insurer will be responsible for the paying out of funds to the owner or operator or other person authorized to conduct closure or postclosure, up to an amount equal to the face amount of the policy.

(3) The insurance policy must be issued for a face amount at least equal to the amount specified in subrule 103.3(9) for closure, postclosure, or corrective action, whichever is applicable. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

(4) An owner or operator, or any other person authorized to conduct closure or postclosure, may receive reimbursements for closure or postclosure expenditures, including partial closure, as applicable. Requests for reimbursement will be granted by the insurer only if the remaining value of the policy is sufficient to cover the remaining costs of closure or postclosure, and if justification and documentation of the cost are placed in the operating record. The owner or operator must submit to the department documentation of the justification for reimbursement and verification that the reimbursement has been received.

(5) Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided that such consent is not unreasonably refused.

(6) The insurance policy must provide that the insurer may not cancel, terminate or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the owner or operator and to the department 120 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternative financial assurance, notice from the insurer of withdrawal of cancellation, or proof of a deposit of a sum equal to the amount of the insurance coverage into the closure and postclosure accounts established pursuant to Iowa Code Supplement section 455B.306(9)"b." If the owner or operator has not complied with this subparagraph within the 60-day time period, this shall constitute a failure to perform and shall be a covered event pursuant to the terms of the insurance policy. A failure by the owner or operator to comply with this subparagraph within the 60-day period shall make the insurer liable for the closure and postclosure of the covered facility up to the amount of the policy limits, which shall be equal to the most recently submitted cost estimates.

(7) For insurance policies providing coverage for postclosure, commencing on the date that liability to make payments pursuant to the policy accrues, the insurer will thereafter annually increase the face amount of the policy. Such increase must be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to 85 percent of the most recent investment rate or of the equivalent coupon-issue yield announced by the U.S. Treasury for 26-week treasury securities.

(8) The owner or operator may cancel the insurance only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

e. Corporate financial test. An owner or operator that satisfies the requirements of this paragraph may demonstrate financial assurance up to the amount specified below:

(1) Financial component. The owner or operator must satisfy the requirements of numbered paragraphs 103.3(6)"e"(1)"1," "2" and "3" to meet the financial component of the corporate financial test.

1. The owner or operator must satisfy one of the following three conditions:

- A current rating for its senior unsubordinated debt of AAA, AA, A, or BBB as issued by Standard & Poor's or Aaa, Aa, A or Baa as issued by Moody's; or
- A ratio of less than 1.5 comparing total liabilities to net worth (net worth calculations may not include future permitted capacity of the subject landfill as an asset); or
- A ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus $10 million, to total liabilities;

2. The tangible net worth, excluding future permitted capacity of the subject landfill, of the owner or operator must be greater than:

- The sum of the current closure, postclosure, and corrective action cost estimates and any other environmental obligations, including guarantees, covered by this financial test plus $10 million except as provided in the second bulleted paragraph of numbered paragraph 103.3(6)"e"(1)"2"; or
- Net worth of $10 million, excluding future permitted capacity of the subject landfill, plus the amount of any guarantees that have not been recognized as liabilities on the financial statements, provided that all of the current closure, postclosure, and corrective action costs and any other environmental obligations covered by a financial test are recognized as liabilities on the owner's or operator's audited financial statements, and are subject to the approval of the department; and

3. The owner or operator must have, located in the United States, assets, excluding future permitted capacity of the subject landfill, amounting to at least the sum of current closure, postclosure, and corrective action cost estimates and any other environmental obligations covered by a financial test as described in subparagraph 103.3(6)"e"(5).

(2) Record-keeping and reporting requirements. The owner or operator must submit the following records to the department and place a copy in the facility's official files prior to the initial receipt of solid waste or cancellation of an alternative financial assurance instrument, in the case of clo-

sure and postclosure; or no later than 120 days after the corrective action plan has been approved by the department:

1. A letter signed by a certified public accountant and based upon a certified audit that:

- Lists all the current cost estimates covered by a financial test including, but not limited to, cost estimates required by subrules 103.3(3) to 103.3(5); cost estimates required for municipal solid waste management facilities pursuant to 40 CFR Part 258; cost estimates required for UIC facilities under 40 CFR Part 144, if applicable; cost estimates required for petroleum underground storage tank facilities under 40 CFR Part 280, if applicable; cost estimates required for PCB storage facilities under 40 CFR Part 761, if applicable; and cost estimates required for hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, if applicable; and
- Provides evidence demonstrating that the owner or operator meets the conditions of subparagraph 103.3(6)"e"(1).

2. A copy of the independent certified public accountant's unqualified opinion of the owner's or operator's financial statements for the latest completed fiscal year. To be eligible to use the financial test, the owner's or operator's financial statements must receive an unqualified opinion from the independent certified public accountant. An adverse opinion or disclaimer of opinion shall be cause for disallowance of this mechanism. A qualified opinion related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance. If the department does not allow use of the corporate financial test, the owner or operator must provide alternative financial assurance that meets the requirements of this rule.

3. If the certified public accountant's letter providing evidence of financial assurance includes financial data which shows that the owner or operator satisfies subparagraph 103.3(6)"e"(1) but which differs from data in the audited financial statements referred to in numbered paragraph 103.3(6)"e"(2)"2," then a special report from the owner's or operator's independent certified public accountant to the owner or operator is required. The special report shall be based upon an agreed-upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the certified public accountant's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of that comparison, and the reasons for any differences.

4. If the certified public accountant's letter provides a demonstration that the owner or operator has assured for environmental obligations as provided in the second bulleted paragraph of numbered paragraph 103.3(6)"e"(2)"1," then the letter shall include a report from the independent certified public accountant that verifies that all of the environmental obligations covered by a financial test have been recognized as liabilities on the audited financial statements and that documents how these obligations have been measured and reported, and verifies that the tangible net worth of the owner or operator is at least $10 million plus the amount of any guarantees provided.

(3) The owner or operator may cease the submission of the information required by paragraph 103.3(6)"e" only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

(4) The department may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subparagraph 103.3(6)"e"(1), require the owner or operator to provide reports of its financial condition in addition to or including current financial test documentation as specified in subparagraph 103.3(6)"e"(2). If the department finds that the owner or operator no longer meets the requirements of subparagraph 103.3(6)"e"(1), the owner or operator must provide alternative financial assurance that meets the requirements of this rule.

(5) Calculation of costs to be assured. When calculating the current cost estimates for closure, postclosure, corrective action, or the sum of the combination of such costs to be covered, and any other environmental obligations assured by a financial test referred to in paragraph 103.3(6)"e," the owner or operator must include cost estimates required for subrules 103.3(3) to 103.3(5); cost estimates for municipal solid waste management facilities pursuant to 40 CFR Section 258.74; and cost estimates required for the following environmental obligations, if the owner or operator assures those environmental obligations through a financial test: obligations associated with UIC facilities under 40 CFR Part 144, petroleum underground storage tank facilities under 40 CFR Part 280, PCB storage facilities under 40 CFR Part 761, and hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265.

f. Local government financial test. An owner or operator that satisfies the requirements of this paragraph may demonstrate financial assurance up to the amount specified below:

(1) Financial component.

1. The owner or operator must satisfy one of the following requirements:

- If the owner or operator has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, the owner or operator must have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard & Poor's, on all such general obligation bonds; or
- The owner or operator must satisfy both of the following financial ratios based on the owner's or operator's most recent audited annual financial statement: a ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05, and a ratio of annual debt service to total expenditures less than or equal to 0.20.

2. The owner or operator must prepare its financial statements in conformity with Generally Accepted Accounting Principles or Other Comprehensive Bases of Accounting and have its financial statements audited by an independent certified public accountant or the office of the auditor of the state of Iowa. The financial statement shall be in the form prescribed by the office of the auditor of the state of Iowa.

3. A local government is not eligible to assure its obligations in paragraph 103.3(6)"f" if it:

- Is currently in default on any outstanding general obligation bonds; or
- Has any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard & Poor's; or
- Operated at a deficit equal to 5 percent or more of total annual revenue in each of the past two fiscal years; or
- Receives an adverse opinion or disclaimer of opinion from the independent certified public accountant or office of the auditor of the state of Iowa auditing its financial statement as required under numbered paragraph 103.3(6)"f"(1)"2." A qualified opinion that is related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance of this mechanism.

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4. The following terms used in this paragraph are defined as follows:

- "Cash plus marketable securities" means all the cash plus marketable securities held by the local government on the last day of a fiscal year, excluding cash and marketable securities designated to satisfy past obligations such as pensions.
- "Debt service" means the amount of principal and interest due on a loan in a given time period, typically the current year.
- "Deficit" means total annual revenues minus total annual expenditures.
- "Total expenditures" means all expenditures, excluding capital outlays and debt repayment.
- "Total revenues" means revenues from all taxes and fees, excluding revenue from funds managed by local government on behalf of a specific third party, and does not include the proceeds from borrowing or asset sales.

(2) Public notice component. The local government owner or operator must include disclosure of the closure and postclosure costs assured through the financial test in its next annual audit report prior to the initial receipt of waste at the facility or prior to cancellation of an alternative financial assurance mechanism, whichever is later. A reference to corrective action costs must be placed in the next annual audit report after the corrective action plan is approved by the department. For the first year the financial test is used to assure costs at a particular facility, the reference may instead be placed in the facility's official files until issuance of the next available annual audit report if timing does not permit the reference to be incorporated into the most recently issued annual audit report or budget. For closure and postclosure costs, conformance with Governmental Accounting Standards Board Statement 18 ensures compliance with this public notice component.

(3) Record-keeping and reporting requirements.

1. The local government owner or operator must submit to the department the following items:

- A letter signed by the local government's chief financial officer that lists all the current cost estimates covered by a financial test, as described in subparagraph 103.3(6)"f"(4); provides evidence and certifies that the local government meets the conditions of numbered paragraphs 103.3(6)"f"(1)"1," "2," and "3"; and certifies that the local government meets the conditions of subparagraphs 103.3(6)"f"(2) and (4); and
- The local government's annual financial report indicating compliance with the financial ratios required by numbered paragraph 103.3(6)"f"(1)"1," second bulleted paragraph, if applicable, and the requirements of numbered paragraph 103.3(6)"f"(1)"2" and the third and fourth bulleted paragraphs of numbered paragraph 103.3(6)"f"(1)"3" and also indicating that the requirements of Governmental Accounting Standards Board Statement 18 have been met.

2. The items required in numbered paragraph 103.3(6)"f"(3)"1" must be submitted to the department and placed in the facility's official files prior to the receipt of waste or prior to the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure; or, in the case of corrective action, not later than 120 days after the corrective action plan is approved by the department.

3. After the initial submission of the required items and their placement in the facility's official files, the local government owner or operator must update the information and place the updated information in the facility's official files within 180 days following the close of the owner's or operator's fiscal year.

4. The owner or operator may cease the submission of the information required by paragraph 103.3(6)"f" only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

5. A local government must satisfy the requirements of the financial test at the close of each fiscal year. If the local government owner or operator no longer meets the requirements of the local government financial test, the local government must, within 180 days following the close of the owner's or operator's fiscal year, obtain alternative financial assurance that meets the requirements of this rule, place the required submissions for that assurance in the operating record, and notify the department that the owner or operator no longer meets the criteria of the financial test and that alternative financial assurance has been obtained.

6. The department, based on a reasonable belief that the local government owner or operator may no longer meet the requirements of the local government financial test, may require additional reports of financial conditions from the local government. If the department finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of the local government financial test, the local government must provide alternative financial assurance in accordance with this rule.

(4) Calculation of costs to be assured. The portion of the closure, postclosure, and corrective action costs which an owner or operator may assure under this paragraph is determined as follows:

1. If the local government owner or operator does not assure other environmental obligations through a financial test, the owner or operator may assure closure, postclosure, and corrective action costs that equal up to 43 percent of the local government's total annual revenue.

2. If the local government assures other environmental obligations through a financial test, including those associated with UIC facilities under 40 CFR Section 144.62, petroleum underground storage tank facilities under 40 CFR Part 280, PCB storage facilities under 40 CFR Part 761, and hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, the owner or operator must add those costs to the closure, postclosure, and corrective action costs it seeks to assure under this paragraph. The total that may be assured must not exceed 43 percent of the local government's total annual revenue.

3. The owner or operator must obtain an alternative financial assurance instrument for those costs that exceed the limits set in numbered paragraphs 103.3(6)"f"(4)"1" and "2."

g. Corporate guarantee.

(1) An owner or operator may meet the requirements of this paragraph by obtaining a written guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, an owner or operator whose parent corporation is also the parent corporation of the owner or operator, or an owner or operator with a "substantial business relationship'' with the owner or operator. The guarantor must meet the requirements for owners or operators in paragraph 103.3(6)"g" and must comply with the terms of the guarantee. A certified copy of the guarantee must be placed in the facility's operating record along with copies of the letter from a certified public accountant and the accountant's opinions. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter from the certi-

fied public accountant must describe the value received in consideration of the guarantee. If the guarantor is an owner or operator with a ''substantial business relationship'' with the owner or operator, this letter must describe this ''substantial business relationship'' and the value received in consideration of the guarantee.

(2) The guarantee must be effective and all required submissions made to the department prior to the initial receipt of waste or before cancellation of an alternative financial mechanism, in the case of closure and postclosure; or, in the case of corrective action, no later than 120 days after the corrective action plan has been approved by the department.

(3) The terms of the guarantee must provide that:

1. If the owner or operator fails to perform closure, postclosure, or corrective action of a facility covered by the guarantee, or fails to obtain alternative financial assurance within 90 days of notice of intent to cancel pursuant to numbered paragraphs 103.3(6)"g"(3)"2" and "3," the guarantor will:

- Perform, or pay a third party to perform, closure, postclosure, or corrective action as required (performance guarantee); or
- Establish a fully funded trust fund as specified in paragraph 103.3(6)"a" in the name of the owner or operator (payment guarantee); or
- Obtain alternative financial assurance as required by numbered paragraph 103.3(6)"g"(3)"3."

2. The guarantee will remain in force for as long as the owner or operator must comply with the applicable financial assurance requirements of this rule unless the guarantor sends prior notice of cancellation by certified mail to the owner or operator and to the department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the department, as evidenced by the return receipts.

3. If notice of cancellation is given, the owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator and the department, provide to the department adequate proof of alternative financial assurance, notice from the guarantor of withdrawal of the cancellation, or proof of the establishment of a fully funded trust fund pursuant to paragraph 103.3(6)"a." If the owner or operator fails to comply with the provisions of this numbered paragraph within the 90-day period, the guarantor must provide that alternative financial assurance prior to cancellation of the corporate guarantee.

(4) If a corporate guarantor no longer meets the requirements of paragraph 103.3(6)"e," the owner or operator must, within 90 days, obtain alternative financial assurance and submit proof of alternative financial assurance to the department. If the owner or operator fails to provide alternative financial assurance within the 90-day period, the guarantor must provide that alternative financial assurance within the next 30 days.

(5) The owner or operator is no longer required to meet the requirements of paragraph 103.3(6)"g" upon the submission to the department of proof of the substitution of alternative financial assurance or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

h. Local government guarantee. An owner or operator may demonstrate financial assurance for closure, postclosure, or corrective action by obtaining a written guarantee provided by a local government or jointly provided by the members of an agency established pursuant to Iowa Code chapter 28E. The guarantor must meet the requirements of the local government financial test in paragraph 103.3(6)"f" and must comply with the terms of a written guarantee.

(1) Terms of the written guarantee. The guarantee must be effective before the initial receipt of waste or before the cancellation of alternative financial assurance, in the case of closure and postclosure; or no later than 120 days after the corrective action plan is approved by the department. The guarantee must provide that:

1. If the owner or operator fails to perform closure, postclosure, or corrective action of a facility covered by the guarantee or fails to obtain alternative financial assurance within 90 days of notice of intent to cancel pursuant to numbered paragraphs 103.3(6)"h"(1)"2" and "3," the guarantor will:

- Perform, or pay a third party to perform, closure, postclosure, or corrective action as required; or
- Establish a fully funded trust fund as specified in paragraph 103.3(6)"a" in the name of the owner or operator; or
- Obtain alternative financial assurance as required by numbered paragraph 103.3(6)"h"(1)"3."

2. The guarantee will remain in force for as long as the owner or operator must comply with the applicable financial assurance requirements of this rule unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the department as evidenced by the return receipts.

3. If notice of cancellation is given, the owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator and the department, provide to the department adequate proof of alternative financial assurance, notice from the guarantor of withdrawal of the cancellation, or proof of the establishment of a fully funded trust fund pursuant to paragraph 103.3(6)"a." If the owner or operator fails to comply with the provisions of this numbered paragraph within the 90-day period, the guarantor must provide that alternative financial assurance prior to cancellation of the guarantee.

(2) Record-keeping and reporting requirements.

1. The owner or operator must submit to the department a certified copy of the guarantee along with the items required under subparagraph 103.3(6)"f"(3) and place a copy in the facility's official files before the initial receipt of waste or before cancellation of alternative financial assurance, whichever is later, in the case of closure and postclosure; or no later than 120 days after the corrective action plan has been approved by the department.

2. The owner or operator shall no longer be required to submit the items specified in numbered paragraph 103.3(6)"h"(2)"1" when proof of alternative financial assurance has been submitted to the department or the owner or operator is no longer required to provide financial assurance pursuant to this rule.

3. If a local government guarantor no longer meets the requirements of paragraph 103.3(6)"f," the owner or operator must, within the 90-day period, submit to the department proof of alternative financial assurance. If the owner or operator fails to obtain alternative financial assurance within the 90-day period, the guarantor must provide that alternative financial assurance within the next 30 days.

i. Local government dedicated fund. The owner or operator of a publicly owned CCR landfill or local government serving as a guarantor may demonstrate financial assurance for closure, postclosure, or corrective action, whichever is applicable, by establishing a dedicated fund or account that conforms to the requirements of this paragraph. A dedicated

fund will be considered eligible if it complies with subparagraph 103.3(6)"i"(1) or (2) below, and all other provisions of this paragraph, and documentation of this compliance has been submitted to the department.

(1) The fund shall be dedicated by state constitutional provision or local government statute, charter, ordinance, or order to pay for closure, postclosure, or corrective action costs that arise from the operation of the CCR landfill and shall be funded for the full amount of coverage or funded for part of the required amount of coverage and used in combination with another mechanism(s) that provides the remaining coverage.

(2) The fund shall be dedicated by state constitutional provision or local government statute, charter, ordinance, or order as a reserve fund and shall be funded for no less than the full amount of coverage or funded for part of the required amount of coverage and used in combination with another mechanism(s) that provides the remaining coverage.

(3) Payments into the dedicated fund must be made annually by the owner or operator for ten years or over the permitted life of the CCR landfill, whichever is shorter, in the case of a dedicated fund for closure or postclosure; or over one-half of the estimated length of an approved corrective action plan in the case of a response to a known release. This is referred to as the pay-in period. The initial payment into the dedicated fund must be made before the initial receipt of waste in the case of closure and postclosure or no later than 120 days after the corrective action plan has been approved by the department.

(4) For a dedicated fund used to demonstrate financial assurance for closure and postclosure, the first payment into the dedicated fund must be at least equal to the amount specified in subrule 103.3(9), divided by the number of years in the pay-in period as defined in paragraph 103.3(6)"i." The amount of subsequent payments must be determined by the following formula:

$$\text{Payment} = \frac{CE - CB}{Y}$$

where CE is the total required financial assurance for the owner or operator, CB is the current balance of the fund, and Y is the number of years remaining in the pay-in period.

(5) For a dedicated fund used to demonstrate financial assurance for corrective action, the first payment into the dedicated fund must be at least one-half of the current cost estimate, divided by the number of years in the corrective action pay-in period as defined in paragraph 103.3(6)"i." The amount of subsequent payments must be determined by the following formula:

$$\text{Payment} = \frac{RB - CF}{Y}$$

where RB is the most recent estimate of the required dedicated fund balance, which is the total cost that will be incurred during the second half of the corrective action period, CF is the current amount in the dedicated fund, and Y is the number of years remaining in the pay-in period.

(6) The initial payment into the dedicated fund must be made before the initial receipt of waste or before the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure; or no later than 120 days after the corrective action remedy has been approved by the department.

(7) After the pay-in period has been completed, the dedicated fund shall be adjusted annually to correct any deficiency of the fund with respect to the adjusted cost estimate and may be adjusted annually should the balance in the fund exceed the adjusted cost estimate.

103.3(7) General requirements.

a. Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of this rule by establishing more than one financial mechanism per facility. The mechanisms must be a combination of those mechanisms outlined in this rule and must provide financial assurance for an amount at least equal to the current cost estimate for closure, postclosure, or corrective action, whichever is applicable. The financial test and a guarantee provided by a corporate parent, sibling or grandparent shall not be combined if the financial statements of the two entities are consolidated.

b. Use of one mechanism for multiple facilities. An owner or operator may satisfy the requirements of this rule for multiple CCR landfills by the use of one mechanism if the owner or operator ensures that the mechanism provides financial assurance for an amount at least equal to the current cost estimates for closure, postclosure, or corrective action, whichever is applicable, for all CCR landfills covered.

c. Criteria. The language of the financial assurance mechanisms listed in this rule must ensure that the instruments satisfy the following criteria:

(1) The financial assurance mechanisms must ensure that the amount of funds assured is sufficient to cover the costs of closure, postclosure, or corrective action for known releases, whichever is applicable;

(2) The financial assurance mechanisms must ensure that funds will be available in a timely fashion when needed;

(3) The financial assurance mechanisms must be obtained by the owner or operator prior to the initial receipt of solid waste and no later than 120 days after the corrective action remedy has been approved by the department until the owner or operator is released from the financial assurance requirements; and

(4) The financial assurance mechanisms must be legally valid, binding, and enforceable under Iowa law.

d. No permit shall be issued by the department pursuant to Iowa Code Supplement section 455B.305 unless the applicant has demonstrated compliance with rule 103.3(455B).

103.3(8) Closure and postclosure accounts. The holder of a permit for a CCR landfill shall maintain a separate account for closure and postclosure as required by Iowa Code Supplement section 455B.306(9)"b." The account shall be specific to a particular facility.

a. Definitions. For the purpose of this subrule, the following definitions shall apply:

"Account" means a formal separate set of records.

"Current balance" means cash in an account established pursuant to this subrule plus the current value of investments of moneys collected pursuant to subrule 103.3(8) and used to purchase one or more of the investments listed in Iowa Code section 12B.10(5).

"Current cost estimate" means the closure cost estimate prepared and submitted to the department pursuant to subrule 103.3(3) and the postclosure cost estimate prepared and submitted pursuant to subrule 103.3(4).

b. Moneys in the accounts shall not be assigned for the benefit of creditors except the state of Iowa.

c. Moneys in the accounts shall not be used to pay any final judgment against a permit holder arising out of the ownership or operation of the site during its active life or after closure.

d. Withdrawal of funds. Except as provided in paragraph 103.3(8)"e," moneys in the accounts may be withdrawn without department approval only for the purpose of

funding closure, including partial closure, or postclosure activities that are in conformance with a closure/postclosure plan which has been submitted pursuant to subrule 103.1(5). Withdrawals for activities not in conformance with a closure/postclosure plan must receive prior written approval from the department. Permit holders using a trust fund established pursuant to paragraph 103.3(6)"a" to satisfy the requirements of this rule must comply with the requirements of subparagraph 103.3(6)"a"(6) prior to withdrawal.

e. Excess funds. If the balance of a closure or postclosure account exceeds the current cost estimate for closure or postclosure at any time, the permit holder may withdraw the excess funds so long as the withdrawal does not cause the balance to be reduced below the amount of the current cost estimate.

f. Initial proof of establishment of account. A permit holder shall submit a statement of account, signed by the permit holder, to the department by April 1, 2008, that indicates that accounts have been established pursuant to this subrule. Permit holders for new CCR landfills permitted after April 1, 2008, shall submit to the department, prior to the CCR landfill's initial receipt of waste, a statement of account, signed by the permit holder.

g. An account established pursuant to paragraph 103.3(6)"a" for trust funds or paragraph 103.3(6)"i" for local government dedicated funds also satisfies the requirements of this subrule, and the permit holder shall not be required to establish closure and postclosure accounts in addition to said financial assurance accounts.

Accounts established pursuant to paragraph 103.3(6)"a" or 103.3(6)"i," which are intended to satisfy the requirements of this subrule, must comply with Iowa Code Supplement section 455B.306(9)"b."

h. Yearly deposits. Deposits into the closure and postclosure accounts shall be made at least yearly in the amounts specified in this subrule beginning with the close of the facility's first fiscal year that begins after [the effective date of this rule]. The deposits shall be made within 30 days of the close of each fiscal year. The minimum yearly deposit to the closure and postclosure accounts shall be determined using the following formula:

$$\frac{CE - CB}{RPC} \times TR = \text{yearly deposit to account}$$

Where:

"CE" means the current cost estimate of closure and postclosure costs.

"CB" means the current balance of the closure or postclosure accounts.

"RPC" means the remaining permitted capacity, in tons, of the landfill as of the start of the permit holder's fiscal year.

"TR" is the number of tons of solid waste disposed of at the facility in the prior year.

i. Closure and postclosure accounts may be commingled with other accounts so long as the amounts credited to each account balance are reported separately pursuant to paragraphs 103.3(3)"a" and 103.3(4)"a."

j. The department shall have full rights of access to all funds existing in a facility's closure or postclosure account, at the sole discretion of the department, if the permit holder fails to undertake closure or postclosure activities after being directed to do so by a final agency action of the department. These funds shall be used only for the purposes of funding closure and postclosure activities at the site.

103.3(9) Amount of required financial assurance. A financial assurance mechanism established pursuant to subrule 103.3(6) shall be in the amount of the third-party cost estimates required by subrules 103.3(3), 103.3(4), and 103.3(5) except that the amount of the financial assurance may be reduced by the sum of the cash balance in a trust fund or local government dedicated fund established to comply with subrule 103.3(8) plus the current value of investments held by said trust fund or local government dedicated fund if invested in one or more of the investments listed in Iowa Code section 12B.10(5).

ITEM 2. Amend 567—Chapter 104 by adopting the following **new** rule:

567—104.26(455B) Solid waste processing facility financial assurance. The holder of a sanitary disposal project permit for a solid waste processing facility shall maintain a closure account as financial assurance. The account shall be specific to a particular facility. Solid waste processing facilities required to maintain financial assurance pursuant to any other provisions of 567—Chapters 100 to 123 may satisfy the requirements of this rule by the use of one account if the permit holder ensures that the account provides financial assurance for an amount at least equal to the current cost estimates for closure of all sanitary disposal project activities covered.

104.26(1) Definitions. For the purpose of this rule, the following definitions shall apply:

"Account" means a formal set of separate records.

"Current cost estimate" means the cost estimate for subrule 104.26(2), prepared and submitted to the department at the time of application for a new processing facility permit, at the time of request for a permit amendment that increases closure costs and with each permit renewal thereafter.

104.26(2) Current cost estimate. The current cost estimate submitted to the department shall be the sum of the following costs:

a. Transportation costs and total tip fees to properly dispose of twice the maximum daily tonnage of solid waste that could be accepted by the processing facility.

b. Transportation costs and total tip fees to properly dispose of the tons of preprocessed solid waste and processed materials equal to the maximum storage capacity of the processing facility, including storage in transport vehicles.

c. The cost of properly cleaning all equipment, storage facilities, holding areas and drainage collection systems pursuant to 104.11(1).

d. The cost of properly disposing of a one-week volume of washwater from the processing facility. If the facility utilizes washwater storage tanks, then this estimate shall assume that the storage tanks are full and add that volume to the one-week volume.

104.26(3) Nonassignment of funds. Moneys in the account shall not be assigned for the benefit of creditors except the state of Iowa.

104.26(4) Final judgments. Moneys in an account shall not be used to pay any final judgment against a permit holder arising out of the ownership or operation of the site during its active life or closure.

104.26(5) Withdrawal of funds. Moneys in the account may be withdrawn without department approval only for the purpose of funding closure, including partial closure, activities that are in conformance with the closure requirements for solid waste processing facilities. Withdrawals for activities not in conformance with a closure requirement must receive prior written approval from the department.

104.26(6) Excess funds. If the balance of a closure account exceeds the current cost estimate for closure at any time, then the permit holder may withdraw the excess funds

so long as the withdrawal does not cause the balance to be reduced below the amount of the current cost estimate.

104.26(7) Initial proof of establishment of account and funds. Proof of the establishment of the account and its compliance with this subrule shall be submitted to the department within 30 days of the close of the permit holder's first fiscal year that begins after [the effective date of this rule], or at the time of application for a permit for a new solid waste processing facility.

104.26(8) Deposits. Deposits into the closure account shall be made on an annual basis for a period of five years, in the amount specified in this subrule, beginning with the start of the permit holder's first fiscal year that begins after [the effective date of this rule]. The deposits shall be made within 30 days of the close of the permit holder's fiscal year. The minimum annual deposit to the closure account shall be determined using the following formula:

$$\frac{CE - CB}{Y} = \text{annual deposit to closure account}$$

Where:

"CE" means the current cost estimate of closure costs, as applicable.

"CB" means the current balance of the closure account, as applicable.

"Y" means the number of years remaining in the five-year pay-in period.

After the pay-in period has been completed, the account shall be adjusted annually to correct any deficiency of the account with respect to the adjusted cost estimates and may be adjusted annually should the balance in the account exceed the adjusted cost estimate.

104.26(9) Investment of funds. Funds held in the account established by this rule may only be invested in instruments listed at Iowa Code section 12B.10(5).

104.26(10) Access to funds by the department. The department shall have full rights of access to all funds existing in a facility's closure account, at the sole discretion of the department, if the permit holder fails to undertake closure activities after being directed to do so by a final agency action of the department. These funds shall be used only for the purpose of funding closure activities at the site.

ITEM 3. Amend rule 567—105.14(455B,455D) as follows:

567—105.14(455B,455D) Composting facility financial assurance. The holder of a permit for a composting facility receiving over 5,000 tons of feedstock annually, bulking agent excluded, shall maintain a closure account for financial assurance. The account shall be specific to a particular facility. *Composting facilities required to maintain financial assurance pursuant to any other provisions of 567—Chapters 100 to 123 may satisfy the requirements of this rule by the use of one account if the permit holder ensures that the account provides financial assurance for an amount at least equal to the current cost estimates for closure of all sanitary disposal project activities covered.*

105.14(1) Definitions. For the purpose of this rule, the following definitions shall apply:

a. "Account" means a formal set of separate records.

b. "Current cost estimate" means the cost estimate for 105.14(2), prepared and submitted to the department at the time of application for a new composting facility permit, *at the time of request for a permit amendment that increases closure costs* and with each permit renewal thereafter ~~by an Iowa-licensed professional engineer or other professional as approved by the department~~.

105.14(2) Current cost estimate. The current cost estimate shall be based upon the following factors:

a. Transportation costs, which include the cost to load the material, and total tip fees to properly dispose of the maximum tonnage of received materials that could be managed and stockpiled by the compost facility. Also included shall be the costs of properly removing any wastewater held at the facility, or

b. Cost of approved beneficial reuse option, approved pursuant to 105.13(3), for the total amount of material that could be managed and stockpiled by the composting facility. If the total amount of material will not be beneficially reused, the remainder of the cost shall be calculated according to 105.14(2)"a." Also included shall be the costs of properly removing any wastewater held at the facility.

105.14(3) Closure account.

a. Nonassignment of funds. ~~Money~~ *Moneys* in the account shall not be assigned for the benefit of creditors except the state of Iowa.

b. Final judgments. ~~Money~~ *Moneys* in an account shall not be used to pay any final judgment against a permit holder arising out of the ownership or operation of the facility during its active life or closure.

c. Withdrawal of funds. ~~Money~~ *Moneys* in the account may be withdrawn without departmental approval only for the purpose of funding closure activities, including partial closure, that are in conformance with the closure requirements for composting facilities. Withdrawals for activities not in conformance with a closure requirement must receive prior written approval from the department.

d. Excess funds. If the balance of a closure account exceeds the current cost estimate for closure at any time, then the permit holder may withdraw the excess funds so long as the withdrawal does not cause the balance to be reduced below the amount of the current cost estimate.

e. Initial proof of establishment of account and funds. Proof of the establishment of the account and its compliance with this subrule shall be submitted to the department within 30 days of the close of the permit holder's first fiscal year that begins after June 19, 2002, or at the time of application for a permit for a new composting facility.

f. Deposits. Deposits into the closure account shall be made on an annual basis for a period of ten years, in the amount specified in this subrule, beginning with the start of the permit holder's first fiscal year that begins after June 19, 2002. The deposits shall be made within 30 days of the close of the permit holder's fiscal year. The minimum annual deposit to the closure account shall be determined using the following formula:

$$\frac{CE - CB}{Y} = \text{annual deposit to closure account}$$

Where:

"CE" means the current cost estimate of closure costs, as applicable.

"CB" means the current balance of the closure account, as applicable.

"Y" means the number of years remaining in the ten-year pay-in period.

After the pay-in period has been completed, the account shall be adjusted annually to correct any deficiency of the account with respect to the adjusted cost estimates and may be adjusted annually should the balance in the account exceed the adjusted cost estimate.

g. Investment of funds. Funds held in the account established by this subrule may be invested only in instruments listed in Iowa Code section 12B.10(5).

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h. Access to funds by the department. The department shall have full rights of access to all funds existing in a facility's closure account, at the sole discretion of the department, if the permit holder fails to undertake closure activities after being directed to do so by a final agency action of the department. These funds shall be used only for the purpose of funding closure activities at the facility.

ITEM 4. Amend rule 567—106.18(455B) as follows:

567—106.18(455B) Citizen convenience center and transfer station financial assurance. The holder of a permit for a citizen convenience center or transfer station shall maintain a closure account as financial assurance. The account shall be specific to a particular facility. *Citizen convenience centers and transfer stations required to maintain financial assurance pursuant to any other provisions of 567—Chapters 100 to 123 may satisfy the requirements of this rule by the use of one account if the permit holder ensures that the account provides financial assurance for an amount at least equal to the current cost estimates for closure of all sanitary disposal project activities covered.*

106.18(1) Definitions. For the purpose of this rule, the following definitions shall apply:

"Account" means a formal set of separate records.

"Current cost estimate" means the cost estimate for subrule 106.18(2), prepared and submitted to the department ~~by an Iowa-licensed engineer on an annual basis for transfer stations~~ *at the time of application for a new permit, at the time of request for a permit amendment that increases closure costs and with each permit renewal thereafter for transfer stations* and ~~once before the commencement of operation for a~~ citizen convenience ~~center~~ *centers*.

106.18(2) Current cost estimate. The current cost estimate submitted ~~by an Iowa-licensed professional engineer (P.E.) on an annual basis~~ to the department shall be the sum of the following costs:

a. Transportation costs and total tip fees to properly dispose of twice the maximum daily tonnage of solid waste that could be accepted by the citizen convenience center or transfer station~~;~~ .

b. Transportation costs and total tip fees to properly dispose of the tons of solid waste equal to the maximum solid waste storage capacity of the transfer station, including solid waste storage in solid waste transport vehicles~~;~~ .

c. The cost of properly cleaning the transfer station building pursuant to subrule 106.17(2) and solid waste transport vehicles pursuant to subrule 106.17(3)~~; and~~ .

d. The cost of properly disposing of a one-week volume of washwater from the transfer station. If the transfer station utilizes washwater storage tanks, then this estimate shall assume that the storage tanks are full and add that volume to the one-week volume.

106.18(3) Nonassignment of funds. ~~Money~~ *Moneys* in the account shall not be assigned for the benefit of creditors except the state of Iowa.

106.18(4) Final judgments. ~~Money~~ *Moneys* in an account shall not be used to pay any final judgment against a permit holder arising out of the ownership or operation of the site during its active life or closure.

106.18(5) Withdrawal of funds. ~~Money~~ *Moneys* in the account may be withdrawn without department approval only for the purpose of funding closure, including partial closure, activities that are in conformance with the closure requirements for citizen convenience centers or transfer stations. Withdrawals for activities not in conformance with a closure requirement must receive prior written approval from the department.

106.18(6) Excess funds. If the balance of a closure account exceeds the current cost estimate for closure at any time, then the permit holder may withdraw the excess funds so long as the withdrawal does not cause the balance to be reduced below the amount of the current cost estimate.

106.18(7) Initial proof of establishment of account and funds. Proof of the establishment of the account and its compliance with this rule shall be submitted to the department within 30 days of the close of the permit holder's first fiscal year that begins after July 17, 2002, or at the time of application for a permit for a new citizen convenience center or transfer station.

106.18(8) Deposits. Deposits into the closure account shall be made on an annual basis for a period of five years, in the amount specified in this rule beginning with the permit holder's first fiscal year that begins after July 17, 2002. The deposits shall be made within 30 days of the close of the permit holder's fiscal year. The minimum annual deposit to the closure account shall be determined using the following formula:

$$\frac{CE - CB}{Y} = \text{annual deposit to closure account}$$

Where:

"CE" means the current cost estimate of closure costs, as applicable.

"CB" means the current balance of the closure account, as applicable.

"Y" means the number of years remaining in the five-year pay-in period.

After the pay-in period has been completed, the account shall be adjusted annually to correct any deficiency of the account with respect to the adjusted cost estimates and may be adjusted annually should the balance in the account exceed the adjusted cost estimate.

106.18(9) Investment of funds. Funds held in the account established by this rule may only be invested in instruments listed at Iowa Code section 12B.10(5).

106.18(10) Access to funds by the department. The department shall have full rights of access to all funds existing in a facility's closure account, at the sole discretion of the department, if the permit holder fails to undertake closure activities after being directed to do so by a final agency action of the department. These funds shall be used only for the purpose of funding closure activities at the site.

ITEM 5. Amend 567—Chapter 112 by adopting the following **new** rule:

567—112.31(455B) Biosolids monofill sanitary landfill financial assurance.

112.31(1) Purpose. The purpose of this rule is to implement Iowa Code section 455B.304(8) and Supplement section 455B.306(9) by providing the criteria for establishing financial assurance for closure, postclosure and corrective action at biosolids monofill sanitary landfills (BMF landfills).

112.31(2) Applicability. The requirements of this rule apply to all owners and operators of BMF landfills accepting waste as of [the effective date of this rule] except owners or operators that are state or federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States.

112.31(3) Financial assurance for closure. The owner or operator of a BMF landfill must establish financial assurance for closure in accordance with the criteria in this rule. The owner or operator must provide continuous coverage for clo-

sure until released from this requirement by demonstrating compliance with subrules 112.26(13) and 112.13(10). Proof of compliance pursuant to paragraphs 112.31(3)"a" through "e" must be submitted by the owner or operator yearly by April 1 and approved by the department.

a. The owner or operator shall submit the current version of department Form 542-8090, Sanitary Landfill Financial Assurance Report Form, which contains, but is not limited to, the amount of the financial assurance, the annual financial statement required by Iowa Code Supplement sections 455B.306(9)"e" and 455B.306(7)"c," and the current balances of the closure and postclosure accounts at the time of submittal as required by Iowa Code Supplement section 455B.306(9)"b."

b. The owner or operator shall submit a copy of the financial assurance instruments or the documents establishing the financial assurance instruments in an amount equal to or greater than the amount specified in subrule 112.31(9). Documentation for the mechanism(s) used to demonstrate financial assurance shall contain, at a minimum, the items required to be submitted as specified in paragraphs 112.31(6)"a" to "i."

c. The owner or operator shall submit a detailed written estimate, in current dollars, certified by an Iowa-licensed professional engineer, of the cost of hiring a third party to close the BMF landfill in accordance with the closure plan as required by subrules 112.26(13) and 112.13(10). Such estimate must be available at any time during the active life of the landfill.

(1) The cost estimate must equal the cost of closing the BMF landfill at any time during the permitted life of the facility when the extent and manner of its operation would make closure the most expensive.

(2) The costs contained in the third-party estimate for closure must be accurate and reasonable when compared to the cost estimates used by other similarly situated landfills in Iowa.

(3) During the active life of the BMF landfill, the owner or operator must annually adjust the closure cost estimate for inflation.

(4) The owner or operator must, annually or at the time of application for a permit amendment that increases closure costs, whichever occurs first, increase the closure cost estimate and the amount of financial assurance provided if changes to the closure plan or BMF landfill conditions increase the maximum cost of closure at any time during the remaining active life of the facility.

(5) The owner or operator may reduce the amount of financial assurance for closure if the most recent estimate of the maximum cost of closure at any time during the active life of the facility is less than the amount of financial assurance currently provided. Prior to the reduction, the owner or operator must submit to the department the justification for the reduction of the closure cost estimate and the updated documentation required by paragraphs 112.31(3)"a" through "e" and receive department approval for the reduction. Approval or denial shall be issued within 30 days of receipt of the reduction request.

(6) The third-party estimate submitted to the department must include the site area subject to closure and account for at least the following factors determined by the department to be minimal necessary costs for closure:

1. Closure and postclosure plan document revisions;
2. Site preparation, earthwork and final grading;
3. Drainage control culverts, piping and structures;
4. Erosion control structures, sediment ponds and terraces;
5. Final cap construction;
6. Cap vegetation soil placement;
7. Cap seeding, mulching and fertilizing;
8. Monitoring well, piezometer and gas control modifications;
9. Leachate system cleanout and extraction well modifications;
10. Monitoring well installations and abandonments;
11. Facility modifications to effect closed status;
12. Engineering and technical services;
13. Legal, financial and administrative services; and
14. Closure compliance certifications and documentation.

d. For publicly owned BMF landfills, the owner or operator shall submit to the department a copy of the owner's or operator's most recent annual audit report in the form prescribed by the office of the auditor of the state of Iowa.

e. Privately held BMF landfills shall submit an affidavit from the owner or operator indicating that a yearly review has been performed by a certified public accountant to determine whether the privately owned landfill is in compliance with this rule. The affidavit shall state the name of the certified public accountant, the dates and conclusions of the review, and the steps taken to rectify any deficiencies identified by the accountant.

112.31(4) Financial assurance for postclosure. The owner or operator of a BMF landfill must establish financial assurance for the costs of postclosure in accordance with the criteria in this rule. The owner or operator must provide continuous coverage for postclosure until released from this requirement by demonstrating compliance with the postclosure plan and the closure permit. Proof of compliance pursuant to paragraphs 112.31(4)"a" through "e" must be submitted by the owner or operator yearly by April 1 and approved by the department.

a. The owner or operator shall submit the current version of department Form 542-8090, Sanitary Landfill Financial Assurance Report Form, which contains, but is not limited to, the amount of the financial assurance, the annual financial statement required by Iowa Code Supplement sections 455B.306(9)"e" and 455B.306(7)"c," and the current balances of the closure and postclosure accounts required by Iowa Code Supplement section 455B.306(9)"b."

b. The owner or operator shall submit a copy of the documents establishing a financial assurance instrument in an amount equal to or greater than the amount specified in subrule 112.31(9). Documentation for the mechanism(s) used to demonstrate financial assurance shall contain, at a minimum, the items required to be submitted as specified in paragraphs 112.31(6)"a" to "i."

c. The owner or operator shall submit a detailed written estimate, in current dollars, certified by an Iowa-licensed professional engineer, of the cost of hiring a third party to conduct postclosure for the BMF landfill in compliance with the postclosure plan developed pursuant to subrules 112.26(14) and 112.13(10). The cost estimate must account for the total cost of conducting postclosure, as described in the plan, for the entire postclosure period.

(1) The cost estimate for postclosure must be based on the most expensive costs of postclosure during the entire postclosure period.

(2) The costs contained in the third-party estimate of postclosure must be accurate and reasonable when compared to the cost estimates used by other similarly situated landfills in Iowa.

(3) During the active life of the BMF landfill and during the postclosure period, the owner or operator must annually adjust the postclosure cost estimate for inflation.

(4) The owner or operator must, annually or at the time of application for a permit amendment that increases postclosure costs, whichever occurs first, increase the estimate and the amount of financial assurance provided if changes in the postclosure plan or BMF landfill conditions increase the maximum cost of postclosure.

(5) The owner or operator may reduce the amount of financial assurance for postclosure if the most recent estimate of the maximum cost of postclosure beginning at any time during the active life of the facility is less than the amount of financial assurance currently provided. Prior to the reduction, the owner or operator must submit to the department the justification for the reduction of the postclosure cost estimate and the updated documentation required by paragraphs 112.31(4)"a" through "e" and must receive department approval for the reduction. Approval or denial shall be issued within 30 days of receipt of the reduction request.

(6) The third-party estimate submitted to the department must include the site area subject to postclosure and account for at least the following factors determined by the department to be minimal necessary costs for postclosure:

1. General site facilities, access roads and fencing maintenance;
2. Cap and vegetative cover maintenance;
3. Drainage and erosion control systems maintenance;
4. Groundwater to waste separation systems maintenance;
5. Gas control systems maintenance;
6. Gas control systems monitoring and reports;
7. Groundwater and surface water monitoring systems maintenance;
8. Groundwater and surface water quality monitoring and reports;
9. Groundwater monitoring systems performance evaluations and reports;
10. Leachate control systems maintenance;
11. Leachate management, transportation and disposal;
12. Leachate control systems performance evaluations and reports;
13. Facility inspections and reports;
14. Engineering and technical services;
15. Legal, financial and administrative services; and
16. Financial assurance, accounting, audits and reports.

d. For publicly owned BMF landfills, the owner or operator shall submit to the department a copy of the owner's or operator's most recent annual audit report in the form prescribed by the office of the auditor of the state of Iowa.

e. Privately held BMF landfills shall submit an affidavit from the owner or operator indicating that a yearly review has been performed by a certified public accountant to determine whether the privately owned landfill is in compliance with this rule. The affidavit shall state the name of the certified public accountant, the dates and conclusions of the review, and the steps taken to rectify any deficiencies identified by the accountant.

112.31(5) Financial assurance for corrective action.

a. An owner or operator required to undertake corrective action must have a detailed written estimate, in current dollars, prepared by an Iowa-licensed professional engineer, of the cost of hiring a third party to perform the required corrective action. The estimate must account for the total costs of the activities described in the approved corrective action plan for the entire corrective action period. The owner or operator must submit to the department the estimate and financial assurance documentation within 30 days of department approval of the corrective action plan.

(1) The owner or operator must annually adjust the estimate for inflation until the corrective action plan is completed.

(2) The owner or operator must increase the cost estimate and the amount of financial assurance provided if changes in the corrective action plan or BMF landfill conditions increase the maximum cost of corrective action.

(3) The owner or operator may reduce the amount of the cost estimate and the amount of financial assurance provided if the estimate exceeds the maximum remaining costs of the remaining corrective action. The owner or operator must submit to the department the justification for the reduction of the cost estimate and documentation of financial assurance.

b. The owner or operator of a BMF landfill required to undertake a corrective action plan must establish financial assurance for the most recent corrective action plan by one of the mechanisms prescribed in subrule 112.31(6). The owner or operator must provide continuous coverage for corrective action until released from financial assurance requirements by demonstrating compliance with the following:

(1) Upon completion of the remedy, the owner or operator must submit to the department a certification of compliance with the approved corrective action plan. The certification must be signed by the owner or operator and by an Iowa-licensed professional engineer.

(2) Upon department approval of completion of the corrective action remedy, the owner or operator shall be released from the requirements for financial assurance for corrective action.

112.31(6) Allowable financial assurance mechanisms. The mechanisms used to demonstrate financial assurance as required by Iowa Code Supplement section 455B.306(9)"a" must ensure that the funds necessary to meet the costs of closure, postclosure, and corrective action for known releases will be available whenever the funds are needed. Owners or operators must choose from options in paragraphs 112.31(6)"a" to "i."

a. Trust fund.

(1) An owner or operator may demonstrate financial assurance for closure, postclosure, or corrective action, whichever is applicable, by establishing a trust fund which conforms to the requirements of this subrule. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. A copy of the trust agreement must be submitted pursuant to subrules 112.31(3), 112.31(4), and 112.31(5) and placed in the facility's official files.

(2) Payments into the trust fund must be made annually by the owner or operator over ten years or over the remaining life of the BMF landfill, whichever is shorter, in the case of a trust fund for closure or postclosure; or over one-half of the estimated length of the corrective action plan in the case of response to a known release. This period is referred to as the pay-in period.

(3) For a trust fund used to demonstrate financial assurance for closure and postclosure, the first payment into the fund must be at least equal to the amount specified in subrule 112.31(9) for closure or postclosure divided by the number of years in the pay-in period as defined in subparagraph 112.31(6)"a"(2). The amount of subsequent payments must be determined by the following formula:

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$$\text{Payment} = \frac{\text{CE} - \text{CB}}{\text{Y}}$$

where CE is the amount specified in 112.31(9) for closure or postclosure (updated for inflation or other changes), CB is the current balance of the trust fund, and Y is the number of years remaining in the pay-in period.

(4) For a trust fund used to demonstrate financial assurance for corrective action, the first payment into the trust fund must be at least equal to one-half of the current cost estimate for corrective action divided by the number of years in the corrective action pay-in period as defined in subparagraph 112.31(6)"a"(2). The amount of subsequent payments must be determined by the following formula:

$$\text{Payment} = \frac{\text{RB} - \text{CV}}{\text{Y}}$$

where RB is the most recent estimate of the required trust fund balance for corrective action, which is the total cost that will be incurred during the second half of the corrective action period, CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(5) The initial payment into the trust fund must be made before the initial receipt of waste or before the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure; or no later than 120 days after the corrective action remedy has been approved by the department.

(6) The owner or operator, or other person authorized to conduct closure, postclosure, or corrective action activities, may request reimbursement from the trustee for these expenditures, including partial closure, as the expenditures are incurred. Requests for reimbursement will be granted by the trustee only if sufficient funds are remaining in the trust fund to cover the remaining costs of closure, postclosure, or corrective action and if justification and documentation of the costs are placed in the operating record. The owner or operator must submit to the department documentation of the justification for reimbursement and verification that reimbursement has been received.

(7) The trust fund may be terminated by the owner or operator only if the owner or operator substitutes alternative financial assurance as specified in this rule or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

(8) After the pay-in period has been completed, the trust fund shall be adjusted annually to correct any deficiency of the fund with respect to the adjusted cost estimate and may be adjusted annually should the balance in the fund exceed the adjusted cost estimate.

b. Surety bond guaranteeing payment or performance.

(1) An owner or operator may demonstrate financial assurance for closure or postclosure by obtaining a payment or performance surety bond which conforms to the requirements of this subrule. An owner or operator may demonstrate financial assurance for corrective action by obtaining a performance bond which conforms to the requirements of this subrule. The bond must be effective before the initial receipt of waste or before the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure; or no later than 120 days after the corrective action remedy has been approved by the department. The owner or operator must submit a copy of the bond to the department and keep a copy in the facility's official files. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury. The state shall not be considered a party to the surety bond.

(2) The penal sum of the bond must be in an amount at least equal to the amount specified in subrule 112.31(9) for closure and postclosure or corrective action, whichever is applicable.

(3) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond and also upon notice from the department pursuant to subparagraph 112.31(6)"b"(6).

(4) The owner or operator must establish a standby trust fund. The standby trust fund must meet the requirements of paragraph 112.31(6)"a" except the requirements for initial payment and subsequent annual payments specified in subparagraphs 112.31(6)"a"(2) through (5).

(5) Payments made under the terms of the bond will be deposited by the surety directly into the standby trust fund. Payments from the trust fund must be approved by the trustee and the department.

(6) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the department 120 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternative financial assurance, notice from the surety of withdrawal of the cancellation, or proof of a deposit into the standby trust fund of a sum equal to the amount of the bond. If the owner or operator has not complied with this subparagraph within the 60-day time period, this shall constitute a failure to perform and the department shall notify the surety, prior to the expiration of the 120-day notice period, that such a failure has occurred.

(7) The bond must be conditioned upon faithful performance by the owner or operator of all closure, postclosure, or corrective action requirements of the Code of Iowa and this rule. A failure to comply with subparagraph 112.31(6)"b"(6) shall also constitute a failure to perform under the terms of the bond.

(8) Liability under the bond shall be for the duration of the operation, closure, and postclosure period.

(9) The owner or operator may cancel the bond only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

c. Letter of credit.

(1) An owner or operator may demonstrate financial assurance for closure, postclosure, or corrective action, whichever is applicable, by obtaining an irrevocable standby letter of credit which conforms to the requirements of this paragraph. The letter of credit must be effective before the initial receipt of waste or before the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure; or no later than 120 days after the corrective action plan is approved by the department. The owner or operator must submit to the department a copy of the letter of credit and place a copy in the facility's official files. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

(2) A letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the name and address of the facility, and the amount of funds assured, must be included with the letter of credit submitted to the department and placed in the facility's files.

(3) The letter of credit must be irrevocable and issued for a period of at least one year in an amount at least equal to the amount specified in subrule 112.31(9) for closure, postclosure or corrective action, whichever is applicable. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the owner or operator and to the department 120 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternative financial assurance, notice of withdrawal of cancellation, or proof of a deposit of a sum equal to the amount of the letter of credit into the closure and postclosure accounts established pursuant to Iowa Code Supplement section 455B.306(9)"b." If the owner or operator has not complied with this subparagraph within the 60-day time period, the issuer of the letter of credit shall deposit a sum equal to the amount of the letter of credit into the closure and postclosure accounts established by the owner or operator pursuant to Iowa Code Supplement section 455B.306(9)"b." The provision of funds by the issuer of the letter of credit shall be considered an issuance of a loan to the owner or operator, and the terms of that loan shall be governed by the letter of credit or subsequent agreement between those parties. The state shall not be considered a party to this credit transaction.

(4) The owner or operator may cancel the letter of credit only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

d. Insurance.

(1) An owner or operator may demonstrate financial assurance for closure, postclosure, or corrective action by obtaining insurance which conforms to the requirements of this paragraph. The insurance must be effective before the initial receipt of waste or prior to cancellation of an alternative financial assurance, in the case of closure and postclosure; or no later than 120 days after the corrective action plan has been approved by the department. At a minimum, the insurer must be licensed to transact the business of insurance, or be eligible to provide insurance as an excess or surplus lines insurer, in one or more states. The owner or operator must submit to the department a copy of the insurance policy and retain a copy in the facility's official files.

(2) The closure or postclosure insurance policy must guarantee that funds will be available to close the BMF landfill whenever final closure occurs or to provide postclosure for the BMF landfill whenever the postclosure period begins, whichever is applicable. The policy must also guarantee that once closure or postclosure begins, the insurer will be responsible for the paying out of funds to the owner or operator or other person authorized to conduct closure or postclosure, up to an amount equal to the face amount of the policy.

(3) The insurance policy must be issued for a face amount at least equal to the amount specified in subrule 112.31(9) for closure, postclosure, or corrective action, whichever is applicable. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

(4) An owner or operator, or any other person authorized to conduct closure or postclosure, may receive reimbursements for closure or postclosure expenditures, including partial closure, as applicable. Requests for reimbursement will be granted by the insurer only if the remaining value of the policy is sufficient to cover the remaining costs of closure or postclosure, and if justification and documentation of the cost are placed in the operating record. The owner or operator must submit to the department documentation of the justification for reimbursement and verification that the reimbursement has been received.

(5) Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided that such consent is not unreasonably refused.

(6) The insurance policy must provide that the insurer may not cancel, terminate or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the owner or operator and to the department 120 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternative financial assurance, notice from the insurer of withdrawal of cancellation, or proof of a deposit of a sum equal to the amount of the insurance coverage into the closure and postclosure accounts established pursuant to Iowa Code Supplement section 455B.306(9)"b." If the owner or operator has not complied with this subparagraph within the 60-day time period, this shall constitute a failure to perform and shall be a covered event pursuant to the terms of the insurance policy. A failure by the owner or operator to comply with this subparagraph within the 60-day period shall make the insurer liable for the closure and postclosure of the covered facility up to the amount of the policy limits, which shall be equal to the most recently submitted cost estimates.

(7) For insurance policies providing coverage for postclosure, commencing on the date that liability to make payments pursuant to the policy accrues, the insurer will thereafter annually increase the face amount of the policy. Such increase must be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to 85 percent of the most recent investment rate or of the equivalent coupon-issue yield announced by the U.S. Treasury for 26-week treasury securities.

(8) The owner or operator may cancel the insurance only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

e. Corporate financial test. An owner or operator that satisfies the requirements of this paragraph may demonstrate financial assurance up to the amount specified below:

(1) Financial component. The owner or operator must satisfy the requirements of numbered paragraphs 112.31(6)"e"(1)"1," "2" and "3" to meet the financial component of the corporate financial test.

1. The owner or operator must satisfy one of the following three conditions:

- A current rating for its senior unsubordinated debt of AAA, AA, A, or BBB as issued by Standard & Poor's or Aaa, Aa, A or Baa as issued by Moody's; or
- A ratio of less than 1.5 comparing total liabilities to net worth (net worth calculations may not include future permitted capacity of the subject landfill as an asset); or

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• A ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus $10 million, to total liabilities;

2. The tangible net worth, excluding future permitted capacity of the subject landfill, of the owner or operator must be greater than:

• The sum of the current closure, postclosure, and corrective action cost estimates and any other environmental obligations, including guarantees, covered by this financial test plus $10 million except as provided in the second bulleted paragraph in numbered paragraph 112.31(6)"e"(1)"2"; or

• Net worth of $10 million, excluding future permitted capacity of the subject landfill, plus the amount of any guarantees that have not been recognized as liabilities on the financial statements, provided that all of the current closure, postclosure, and corrective action costs and any other environmental obligations covered by a financial test are recognized as liabilities on the owner's or operator's audited financial statements, and are subject to the approval of the department; and

3. The owner or operator must have, located in the United States, assets, excluding future permitted capacity of the subject landfill, amounting to at least the sum of current closure, postclosure, and corrective action cost estimates and any other environmental obligations covered by a financial test as described in subparagraph 112.31(6)"e"(5).

(2) Record-keeping and reporting requirements. The owner or operator must submit the following records to the department and place a copy in the facility's official files prior to the initial receipt of solid waste or cancellation of an alternative financial assurance instrument, in the case of closure and postclosure; or no later than 120 days after the corrective action plan has been approved by the department:

1. A letter signed by a certified public accountant and based upon a certified audit that:

• Lists all the current cost estimates covered by a financial test including, but not limited to, cost estimates required by subrules 112.31(3) to 112.31(5); cost estimates required for municipal solid waste management facilities pursuant to 40 CFR Part 258; cost estimates required for UIC facilities under 40 CFR Part 144, if applicable; cost estimates required for petroleum underground storage tank facilities under 40 CFR Part 280, if applicable; cost estimates required for PCB storage facilities under 40 CFR Part 761, if applicable; and cost estimates required for hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, if applicable; and

• Provides evidence demonstrating that the owner or operator meets the conditions of subparagraph 112.31(6)"e"(1).

2. A copy of the independent certified public accountant's unqualified opinion of the owner's or operator's financial statements for the latest completed fiscal year. To be eligible to use the financial test, the owner's or operator's financial statements must receive an unqualified opinion from the independent certified public accountant. An adverse opinion or disclaimer of opinion shall be cause for disallowance of this mechanism. A qualified opinion related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance. If the department does not allow use of the corporate financial test, the owner or operator must provide alternative financial assurance that meets the requirements of this rule.

3. If the certified public accountant's letter providing evidence of financial assurance includes financial data which shows that the owner or operator satisfies subparagraph 112.31(6)"e"(1) but which differs from data in the audited financial statements referred to in numbered paragraph 112.31(6)"e"(2)"2," then a special report from the owner's or operator's independent certified public accountant to the owner or operator is required. The special report shall be based upon an agreed-upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the certified public accountant's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of that comparison, and the reasons for any differences.

4. If the certified public accountant's letter provides a demonstration that the owner or operator has assured for environmental obligations as provided in the second bulleted paragraph of numbered paragraph 112.31(6)"e"(2)"1," then the letter shall include a report from the independent certified public accountant that verifies that all of the environmental obligations covered by a financial test have been recognized as liabilities on the audited financial statements and that documents how these obligations have been measured and reported, and verifies that the tangible net worth of the owner or operator is at least $10 million plus the amount of any guarantees provided.

(3) The owner or operator may cease the submission of the information required by paragraph 112.31(6)"e" only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

(4) The department may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subparagraph 112.31(6)"e"(1), require the owner or operator to provide reports of its financial condition in addition to or including current financial test documentation as specified in subparagraph 112.31(6)"e"(2). If the department finds that the owner or operator no longer meets the requirements of subparagraph 112.31(6)"e"(1), the owner or operator must provide alternative financial assurance that meets the requirements of this rule.

(5) Calculation of costs to be assured. When calculating the current cost estimates for closure, postclosure, corrective action, or the sum of the combination of such costs to be covered, and any other environmental obligations assured by a financial test referred to in paragraph 112.31(6)"e," the owner or operator must include cost estimates required for subrules 112.31(3) to 112.31(5); cost estimates for municipal solid waste management facilities pursuant to 40 CFR Section 258.74; and cost estimates required for the following environmental obligations, if the owner or operator assures those environmental obligations through a financial test: obligations associated with UIC facilities under 40 CFR Part 144, petroleum underground storage tank facilities under 40 CFR Part 280, PCB storage facilities under 40 CFR Part 761, and hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265.

f. Local government financial test. An owner or operator that satisfies the requirements of this paragraph may demonstrate financial assurance up to the amount specified below:

(1) Financial component.

1. The owner or operator must satisfy one of the following requirements:

• If the owner or operator has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, the owner or opera-

tor must have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard & Poor's, on all such general obligation bonds; or

- The owner or operator must satisfy both of the following financial ratios based on the owner's or operator's most recent audited annual financial statement: a ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05, and a ratio of annual debt service to total expenditures less than or equal to 0.20.

2. The owner or operator must prepare its financial statements in conformity with Generally Accepted Accounting Principles or Other Comprehensive Bases of Accounting and have its financial statements audited by an independent certified public accountant or the office of the auditor of the state of Iowa. The financial statement shall be in the form prescribed by the office of the auditor of the state of Iowa.

3. A local government is not eligible to assure its obligations in paragraph 112.31(6)"f" if it:

- Is currently in default on any outstanding general obligation bonds; or
- Has any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard & Poor's; or
- Operated at a deficit equal to 5 percent or more of total annual revenue in each of the past two fiscal years; or
- Receives an adverse opinion or disclaimer of opinion from the independent certified public accountant or office of the auditor of the state of Iowa auditing its financial statement as required under numbered paragraph 112.31(6)"f"(1)"2." A qualified opinion that is related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance of this mechanism.

4. The following terms used in this paragraph are defined as follows:

- "Cash plus marketable securities" means all the cash plus marketable securities held by the local government on the last day of a fiscal year, excluding cash and marketable securities designated to satisfy past obligations such as pensions.
- "Debt service" means the amount of principal and interest due on a loan in a given time period, typically the current year.
- "Deficit" means total annual revenues minus total annual expenditures.
- "Total expenditures" means all expenditures, excluding capital outlays and debt repayment.
- "Total revenues" means revenues from all taxes and fees, excluding revenue from funds managed by local government on behalf of a specific third party, and does not include the proceeds from borrowing or asset sales.

(2) Public notice component. The local government owner or operator must include disclosure of the closure and postclosure costs assured through the financial test in its next annual audit report prior to the initial receipt of waste at the facility or prior to cancellation of an alternative financial assurance mechanism, whichever is later. A reference to corrective action costs must be placed in the next annual audit report after the corrective action plan is approved by the department. For the first year the financial test is used to assure costs at a particular facility, the reference may instead be placed in the facility's official files until issuance of the next available annual audit report if timing does not permit the reference to be incorporated into the most recently issued annual audit report or budget. For closure and postclosure costs, conformance with Governmental Accounting Standards Board Statement 18 ensures compliance with this public notice component.

(3) Record-keeping and reporting requirements.

1. The local government owner or operator must submit to the department the following items:

- A letter signed by the local government's chief financial officer that lists all the current cost estimates covered by a financial test, as described in subparagraph 112.31(6)"f"(4); provides evidence and certifies that the local government meets the conditions of numbered paragraphs 112.31(6)"f"(1)"1," "2," and "3"; and certifies that the local government meets the conditions of subparagraphs 112.31(6)"f"(2) and (4); and
- The local government's annual financial report indicating compliance with the financial ratios required by numbered paragraph 112.31(6)"f"(1)"1," second bulleted paragraph, if applicable, and the requirements of numbered paragraph 112.31(6)"f"(1)"2" and the third and fourth bulleted paragraphs of numbered paragraph 112.31(6)"f"(1)"3"; and also indicating that the requirements of Governmental Accounting Standards Board Statement 18 have been met.

2. The items required in numbered paragraph 112.31(6)"f"(3)"1" must be submitted to the department and placed in the facility's official files prior to the receipt of waste or prior to the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure; or, in the case of corrective action, not later than 120 days after the corrective action plan is approved by the department.

3. After the initial submission of the required items and their placement in the facility's official files, the local government owner or operator must update the information and place the updated information in the facility's official files within 180 days following the close of the owner's or operator's fiscal year.

4. The owner or operator may cease the submission of the information required by paragraph 112.31(6)"f" only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

5. A local government must satisfy the requirements of the financial test at the close of each fiscal year. If the local government owner or operator no longer meets the requirements of the local government financial test, the local government must, within 180 days following the close of the owner's or operator's fiscal year, obtain alternative financial assurance that meets the requirements of this rule, place the required submissions for that assurance in the operating record, and notify the department that the owner or operator no longer meets the criteria of the financial test and that alternative financial assurance has been obtained.

6. The department, based on a reasonable belief that the local government owner or operator may no longer meet the requirements of the local government financial test, may require additional reports of financial conditions from the local government. If the department finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of the local government financial test, the local government must provide alternative financial assurance in accordance with this rule.

(4) Calculation of costs to be assured. The portion of the closure, postclosure, or corrective action costs which an owner or operator may assure under this paragraph is determined as follows:

1. If the local government owner or operator does not assure other environmental obligations through a financial test,

the owner or operator may assure closure, postclosure, and corrective action costs that equal up to 43 percent of the local government's total annual revenue.

2. If the local government assures other environmental obligations through a financial test, including those associated with UIC facilities under 40 CFR Section 144.62, petroleum underground storage tank facilities under 40 CFR Part 280, PCB storage facilities under 40 CFR Part 761, and hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, the owner or operator must add those costs to the closure, postclosure, and corrective action costs it seeks to assure under this paragraph. The total that may be assured must not exceed 43 percent of the local government's total annual revenue.

3. The owner or operator must obtain an alternative financial assurance instrument for those costs that exceed the limits set in numbered paragraphs 112.31(6)"f"(4)"1" and "2."

g. Corporate guarantee.

(1) An owner or operator may meet the requirements of this paragraph by obtaining a written guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, an owner or operator whose parent corporation is also the parent corporation of the owner or operator, or an owner or operator with a "substantial business relationship'' with the owner or operator. The guarantor must meet the requirements for owners or operators in paragraph 112.31(6)"g" and must comply with the terms of the guarantee. A certified copy of the guarantee must be placed in the facility's operating record along with copies of the letter from a certified public accountant and the accountant's opinions. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter from the certified public accountant must describe the value received in consideration of the guarantee. If the guarantor is an owner or operator with a ''substantial business relationship'' with the owner or operator, this letter must describe this ''substantial business relationship'' and the value received in consideration of the guarantee.

(2) The guarantee must be effective and all required submissions made to the department prior to the initial receipt of waste or before cancellation of an alternative financial mechanism, in the case of closure and postclosure; or, in the case of corrective action, no later than 120 days after the corrective action plan has been approved by the department.

(3) The terms of the guarantee must provide that:

1. If the owner or operator fails to perform closure, postclosure, or corrective action of a facility covered by the guarantee, or fails to obtain alternative financial assurance within 90 days of notice of intent to cancel pursuant to numbered paragraphs 112.31(6)"g"(3)"2" and "3," the guarantor will:

- Perform, or pay a third party to perform, closure, postclosure, or corrective action as required (performance guarantee); or
- Establish a fully funded trust fund as specified in paragraph 112.31(6)"a" in the name of the owner or operator (payment guarantee); or
- Obtain alternative financial assurance as required by numbered paragraph 112.31(6)"g"(3)"3."

2. The guarantee will remain in force for as long as the owner or operator must comply with the applicable financial assurance requirements of this rule unless the guarantor sends prior notice of cancellation by certified mail to the owner or operator and to the department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the department, as evidenced by the return receipts.

3. If notice of cancellation is given, the owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator and the department, provide to the department adequate proof of alternative financial assurance, notice from the guarantor of withdrawal of the cancellation, or proof of the establishment of a fully funded trust fund pursuant to paragraph 112.31(6)"a." If the owner or operator fails to comply with the provisions of this numbered paragraph within the 90-day period, the guarantor must provide that alternative financial assurance prior to cancellation of the corporate guarantee.

(4) If a corporate guarantor no longer meets the requirements of paragraph 112.31(6)"e," the owner or operator must, within 90 days, obtain alternative financial assurance and submit proof of alternative financial assurance to the department. If the owner or operator fails to provide alternative financial assurance within the 90-day period, the guarantor must provide that alternative financial assurance within the next 30 days.

(5) The owner or operator is no longer required to meet the requirements of paragraph 112.31(6)"g" upon the submission to the department of proof of the substitution of alternative financial assurance or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

h. Local government guarantee. An owner or operator may demonstrate financial assurance for closure, postclosure, or corrective action by obtaining a written guarantee provided by a local government or jointly provided by the members of an agency established pursuant to Iowa Code chapter 28E. The guarantor must meet the requirements of the local government financial test in paragraph 112.31(6)"f" and must comply with the terms of a written guarantee.

(1) Terms of the written guarantee. The guarantee must be effective before the initial receipt of waste or before the cancellation of alternative financial assurance, in the case of closure and postclosure; or no later than 120 days after the corrective action plan is approved by the department. The guarantee must provide that:

1. If the owner or operator fails to perform closure, postclosure, or corrective action of a facility covered by the guarantee or fails to obtain alternative financial assurance within 90 days of notice of intent to cancel pursuant to numbered paragraphs 112.31(6)"h"(1)"2" and "3," the guarantor will:

- Perform, or pay a third party to perform, closure, postclosure, or corrective action as required; or
- Establish a fully funded trust fund as specified in paragraph 112.31(6)"a" in the name of the owner or operator; or
- Obtain alternative financial assurance as required by numbered paragraph 112.31(6)"h"(1)"3."

2. The guarantee will remain in force for as long as the owner or operator must comply with the applicable financial assurance requirements unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the department as evidenced by the return receipts.

3. If notice of cancellation is given, the owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator and the department, provide to the department adequate proof of alternative financial assurance, notice from the guarantor of withdrawal of the cancellation, or proof of the establishment of a fully funded trust

fund pursuant to paragraph 112.31(6)"a." If the owner or operator fails to comply with the provisions of this numbered paragraph within the 90-day period, the guarantor must provide that alternative financial assurance prior to cancellation of the guarantee.

(2) Record-keeping and reporting requirements.

1. The owner or operator must submit to the department a certified copy of the guarantee along with the items required under subparagraph 112.31(6)"f"(3) and place a copy in the facility's official files before the initial receipt of waste or before cancellation of alternative financial assurance, whichever is later, in the case of closure and postclosure; or no later than 120 days after the corrective action plan has been approved by the department.

2. The owner or operator shall no longer be required to submit the items specified in numbered paragraph 112.31(6)"h"(2)"1" when proof of alternative financial assurance has been submitted to the department or the owner or operator is no longer required to provide financial assurance pursuant to this rule.

3. If a local government guarantor no longer meets the requirements of paragraph 112.31(6)"f," the owner or operator must, within 90 days, submit to the department proof of alternative financial assurance. If the owner or operator fails to obtain alternative financial assurance within the 90-day period, the guarantor must provide that alternative financial assurance within the next 30 days.

i. Local government dedicated fund. The owner or operator of a publicly owned BMF landfill or local government serving as a guarantor may demonstrate financial assurance for closure, postclosure, or corrective action, whichever is applicable, by establishing a dedicated fund or account that conforms to the requirements of this paragraph. A dedicated fund will be considered eligible if it complies with subparagraph 112.31(6)"i"(1) or (2), and all other provisions of this paragraph, and documentation of this compliance has been submitted to the department.

(1) The fund shall be dedicated by state constitutional provision or local government statute, charter, ordinance, or order to pay for closure, postclosure, or corrective action costs arising from the operation of the BMF landfill and shall be funded for the full amount of coverage or funded for part of the required amount of coverage and used in combination with another mechanism(s) that provides the remaining coverage.

(2) The fund shall be dedicated by state constitutional provision or local government statute, charter, ordinance, or order as a reserve fund and shall be funded for no less than the full amount of coverage or funded for part of the required amount of coverage and used in combination with another mechanism(s) that provides the remaining coverage.

(3) Payments into the dedicated fund must be made annually by the owner or operator for ten years or over the permitted life of the BMF landfill, whichever is shorter, in the case of a dedicated fund for closure or postclosure; or over one-half of the estimated length of an approved corrective action plan in the case of a response to a known release. This is referred to as the pay-in period. The initial payment into the dedicated fund must be made before the initial receipt of waste in the case of closure and postclosure or no later than 120 days after the corrective action plan has been approved by the department.

(4) For a dedicated fund used to demonstrate financial assurance for closure and postclosure, the first payment into the fund must be at least equal to the amount specified in subrule 112.31(9), divided by the number of years in the pay-in period as defined in paragraph 112.31(6)"i." The amount of subsequent payments must be determined by the following formula:

$$\text{Payment} = \frac{CE - CB}{Y}$$

where CE is the total required financial assurance for the owner or operator, CB is the current balance of the fund, and Y is the number of years remaining in the pay-in period.

(5) For a dedicated fund used to demonstrate financial assurance for corrective action, the first payment into the dedicated fund must be at least one-half of the current cost estimate, divided by the number of years in the corrective action pay-in period as defined in 112.31(6)"i." The amount of subsequent payments must be determined by the following formula:

$$\text{Payment} = \frac{RB - CF}{Y}$$

where RB is the most recent estimate of the required dedicated fund balance, which is the total cost that will be incurred during the second half of the corrective action period, CF is the current amount in the dedicated fund, and Y is the number of years remaining in the pay-in period.

(6) The initial payment into the dedicated fund must be made before the initial receipt of waste or before the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure; or no later than 120 days after the corrective action remedy has been approved by the department.

(7) After the pay-in period has been completed, the dedicated fund shall be adjusted annually to correct any deficiency of the fund with respect to the adjusted cost estimates and may be adjusted annually should the balance in the fund exceed the adjusted cost estimate.

112.31(7) General requirements.

a. Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of this rule by establishing more than one financial mechanism per facility. The mechanisms must be a combination of those mechanisms outlined in this rule and must provide financial assurance for an amount at least equal to the current cost estimate for closure, postclosure, or corrective action, whichever is applicable. The financial test and a guarantee provided by a corporate parent, sibling or grandparent may not be combined if the financial statements of the two entities are consolidated.

b. Use of one mechanism for multiple facilities. An owner or operator may satisfy the requirements of this rule for multiple BMF landfills by the use of one mechanism if the owner or operator ensures that the mechanism provides financial assurance for an amount at least equal to the current cost estimates for closure, postclosure, or corrective action, whichever is applicable, for all BMF landfills covered.

c. Criteria. The language of the financial assurance mechanisms listed in this rule must ensure that the instruments satisfy the following criteria:

(1) The financial assurance mechanisms must ensure that the amount of funds assured is sufficient to cover the costs of closure, postclosure, or corrective action for known releases, whichever is applicable;

(2) The financial assurance mechanisms must ensure that funds will be available in a timely fashion when needed;

(3) The financial assurance mechanisms must be obtained by the owner or operator prior to the initial receipt of solid waste and no later than 120 days after the corrective action remedy has been approved by the department until the owner

or operator is released from the financial assurance requirements; and

(4) The financial assurance mechanisms must be legally valid, binding, and enforceable under Iowa law.

d. No permit shall be issued by the department pursuant to Iowa Code Supplement section 455B.305 unless the applicant has demonstrated compliance with rule 567—112.31(455B).

112.31(8) Closure and postclosure accounts. The holder of a permit for a BMF landfill shall maintain a separate account for closure and postclosure as required by Iowa Code Supplement section 455B.306(9)"b." The account shall be specific to a particular facility.

a. Definitions. For the purpose of this subrule, the following definitions shall apply:

"Account" means a formal separate set of records.

"Current balance" means cash in an account established pursuant to this subrule plus the current value of investments of moneys collected pursuant to subrule 112.31(8) and used to purchase one or more of the investments listed at Iowa Code section 12B.10(5).

"Current cost estimate" means the closure cost estimate prepared and submitted to the department pursuant to subrule 112.31(3) and the postclosure cost estimate prepared and submitted pursuant to subrule 112.31(4).

b. Moneys in the accounts shall not be assigned for the benefit of creditors except the state of Iowa.

c. Moneys in the accounts shall not be used to pay any final judgment against a permit holder arising out of the ownership or operation of the site during its active life or after closure.

d. Withdrawal of funds. Except as provided in paragraph 112.31(8)"e," moneys in the accounts may be withdrawn without department approval only for the purpose of funding closure, including partial closure, or postclosure activities that are in conformance with a closure/postclosure plan which has been submitted pursuant to subrule 112.13(10). Withdrawals for activities not in conformance with a closure/postclosure plan must receive prior written approval from the department. Permit holders using a trust fund established pursuant to paragraph 112.31(6)"a" to satisfy the requirements of this rule must comply with the requirements of subparagraph 112.31(6)"a"(6) prior to withdrawal.

e. Excess funds. If the balance of a closure or postclosure account exceeds the current cost estimate for closure or postclosure at any time, the permit holder may withdraw the excess funds so long as the withdrawal does not cause the balance to be reduced below the amount of the current cost estimate.

f. Initial proof of establishment of account. A permit holder shall submit a statement of account, signed by the permit holder, to the department by April 1, 2008, that indicates that accounts have been established pursuant to this subrule. Permit holders for new BMF landfills permitted after April 1, 2008, shall submit to the department, prior to the landfill's initial receipt of waste a statement of account, signed by the permit holder.

g. An account established pursuant to paragraph 112.31(6)"a" for trust funds or paragraph 112.31(6)"i" for local government dedicated funds also satisfies the requirements of this subrule, and the permit holder shall not be required to establish closure and postclosure accounts in addition to said financial assurance accounts.

Accounts established pursuant to paragraph 112.31(6)"a" or 112.31(6)"i," which are intended to satisfy the requirements of this subrule, must comply with Iowa Code Supplement section 455B.306(9)"b."

h. Yearly deposits. Deposits into the closure and postclosure accounts shall be made at least yearly in the amounts specified in this subrule beginning with the close of the facility's first fiscal year that begins after [the effective date of this rule]. The deposits shall be made within 30 days of the close of each fiscal year. The minimum yearly deposit to the closure and postclosure accounts shall be determined using the following formula:

$$\frac{CE - CB}{RPC} \times TR = \text{yearly deposit to account}$$

Where:

"CE" means the current cost estimate of closure and postclosure costs.

"CB" means the current balance of the closure or postclosure accounts.

"RPC" means the remaining permitted capacity, in tons, of the landfill as of the start of the permit holder's fiscal year.

"TR" is the number of tons of solid waste disposed of at the facility in the prior year.

i. Closure and postclosure accounts may be commingled with other accounts so long as the amounts credited to each account balance are reported separately pursuant to paragraphs 112.31(3)"a" and 112.31(4)"a."

j. The department shall have full rights of access to all funds existing in a facility's closure or postclosure account, at the sole discretion of the department, if the permit holder fails to undertake closure or postclosure activities after being directed to do so by a final agency action of the department. These funds shall be used only for the purposes of funding closure and postclosure activities at the site.

112.31(9) Amount of required financial assurance. A financial assurance mechanism established pursuant to subrule 112.31(6) shall be in the amount of the third-party cost estimates required by subrules 112.31(3), 112.31(4), and 112.31(5) except that the amount of the financial assurance may be reduced by the sum of the cash balance in a trust fund or local government dedicated fund established to comply with subrule 112.31(8) plus the current value of investments held by said trust fund or local government dedicated fund if invested in one or more of the investments listed in Iowa Code section 12B.10(5).

ITEM 6. Amend 567—Chapter 114 by adopting the following **new** rule:

567—114.31(455B) Construction and demolition wastes sanitary landfill financial assurance.

114.31(1) Purpose. The purpose of this rule is to implement Iowa Code section 455B.304(8) and Supplement section 455B.306(9) by providing the criteria for establishing financial assurance for closure, postclosure and corrective action at construction and demolition wastes sanitary landfills (CND landfills).

114.31(2) Applicability. The requirements of this rule apply to all owners and operators of CND landfills accepting waste as of [the effective date of this rule] except owners or operators that are state or federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States.

114.31(3) Financial assurance for closure. The owner or operator of a CND landfill must establish financial assurance for closure in accordance with the criteria in this rule. The owner or operator must provide continuous coverage for closure until released from this requirement by demonstrating compliance with subrules 114.26(13) and 114.13(10). Proof

of compliance pursuant to paragraphs 114.31(3)"a" through "e" must be submitted by the owner or operator yearly by April 1 and approved by the department.

a. The owner or operator shall submit the current version of department Form 542-8090, Sanitary Landfill Financial Assurance Report Form, which contains, but is not limited to, the amount of the financial assurance, the annual financial statement required by Iowa Code Supplement sections 455B.306(9)"e" and 455B.306(7)"c," and the current balances of the closure and postclosure accounts at the time of submittal as required by Iowa Code Supplement section 455B.306(9)"b."

b. The owner or operator shall submit a copy of the financial assurance instruments or the documents establishing the financial assurance instruments in an amount equal to or greater than the amount specified in subrule 114.31(9). Documentation for the mechanism(s) used to demonstrate financial assurance shall contain, at a minimum, the items required to be submitted as specified in paragraphs 114.31(6)"a" to "i."

c. The owner or operator shall submit a detailed written estimate, in current dollars, certified by an Iowa-licensed professional engineer, of the cost of hiring a third party to close the CND landfill in accordance with the closure plan as required by subrules 114.26(13) and 114.13(10). Such estimate must be available at any time during the active life of the landfill.

(1) The cost estimate must equal the cost of closing the CND landfill at any time during the permitted life of the facility when the extent and manner of its operation would make closure the most expensive.

(2) The costs contained in the third-party estimate for closure must be accurate and reasonable when compared to the cost estimates used by other similarly situated landfills in Iowa.

(3) During the active life of the landfill, the owner or operator must annually adjust the closure cost estimate for inflation.

(4) The owner or operator must, annually or at the time of application for a permit amendment that increases closure costs, whichever occurs first, increase the closure cost estimate and the amount of financial assurance provided if changes to the closure plan or CND landfill conditions increase the maximum cost of closure at any time during the remaining active life of the facility.

(5) The owner or operator may reduce the amount of financial assurance for closure if the most recent estimate of the maximum cost of closure at any time during the active life of the facility is less than the amount of financial assurance currently provided. Prior to the reduction, the owner or operator must submit to the department the justification for the reduction of the closure cost estimate and the updated documentation required by paragraphs 114.31(3)"a" through "e" and receive department approval for the reduction. Approval or denial shall be issued within 30 days of receipt of the reduction request.

(6) The third-party estimate submitted to the department must include the site area subject to closure and account for at least the following factors determined by the department to be minimal necessary costs for closure:

1. Closure and postclosure plan document revisions;
2. Site preparation, earthwork and final grading;
3. Drainage control culverts, piping and structures;
4. Erosion control structures, sediment ponds and terraces;
5. Final cap construction;
6. Cap vegetation soil placement;
7. Cap seeding, mulching and fertilizing;
8. Monitoring well, piezometer and gas control modifications;
9. Leachate system cleanout and extraction well modifications;
10. Monitoring well installations and abandonments;
11. Facility modifications to effect closed status;
12. Engineering and technical services;
13. Legal, financial and administrative services; and
14. Closure compliance certifications and documentation.

d. For publicly owned CND landfills, the owner or operator shall submit to the department a copy of the owner's or operator's most recent annual audit report in the form prescribed by the office of the auditor of the state of Iowa.

e. Privately held CND landfills shall submit an affidavit from the owner or operator indicating that a yearly review has been performed by a certified public accountant to determine whether the privately owned landfill is in compliance with this rule. The affidavit shall state the name of the certified public accountant, the dates and conclusions of the review, and the steps taken to rectify any deficiencies identified by the accountant.

114.31(4) Financial assurance for postclosure. The owner or operator of a CND landfill must establish financial assurance for the costs of postclosure in accordance with the criteria in this rule. The owner or operator must provide continuous coverage for postclosure until released from this requirement by demonstrating compliance with the postclosure plan and the closure permit. Proof of compliance pursuant to paragraphs 114.31(4)"a" through "e" must be submitted by the owner or operator yearly by April 1 and approved by the department.

a. The owner or operator shall submit the current version of department Form 542-8090, Sanitary Landfill Financial Assurance Report Form, which contains, but is not limited to, the amount of the financial assurance, the annual financial statement required by Iowa Code Supplement sections 455B.306(9)"e" and 455B.306(7)"c," and the current balances of the closure and postclosure accounts required by Iowa Code Supplement section 455B.306(9)"b."

b. The owner or operator shall submit a copy of the documents establishing a financial assurance instrument in an amount equal to or greater than the amount specified in subrule 114.31(9). Documentation for the mechanism(s) used to demonstrate financial assurance shall contain, at a minimum, the items required to be submitted as specified in paragraphs 114.31(6)"a" to "i."

c. The owner or operator shall submit a detailed written estimate, in current dollars, certified by an Iowa-licensed professional engineer, of the cost of hiring a third party to conduct postclosure for the CND landfill in compliance with the postclosure plan developed pursuant to subrules 114.26(14) and 114.13(10). The cost estimate must account for the total cost of conducting postclosure, as described in the plan, for the entire postclosure period.

(1) The cost estimate for postclosure must be based on the most expensive costs during the entire postclosure period.

(2) The costs contained in the third-party estimate for postclosure must be accurate and reasonable when compared to the cost estimates used by other similarly situated landfills in Iowa.

(3) During the active life of the CND landfill and during the postclosure period, the owner or operator must annually adjust the postclosure cost estimate for inflation.

(4) The owner or operator must, annually or at the time of application for a permit amendment that increases postclosure costs, whichever occurs first, increase the estimate and the amount of financial assurance provided if changes in the postclosure plan or CND landfill conditions increase the maximum cost of postclosure.

(5) The owner or operator may reduce the amount of financial assurance for postclosure if the most recent estimate of the maximum cost of postclosure beginning at any time during the active life of the facility is less than the amount of financial assurance currently provided. Prior to the reduction, the owner or operator must submit to the department the justification for the reduction of the postclosure cost estimate and the updated documentation required by paragraphs 114.31(4)"a" through "e" and must receive department approval for the reduction. Approval or denial shall be issued within 30 days of receipt of the reduction request.

(6) The third-party estimate submitted to the department must include the site area subject to postclosure and account for at least the following factors determined by the department to be minimal necessary costs for postclosure:

1. General site facilities, access roads and fencing maintenance;
2. Cap and vegetative cover maintenance;
3. Drainage and erosion control systems maintenance;
4. Groundwater to waste separation systems maintenance;
5. Gas control systems maintenance;
6. Gas control systems monitoring and reports;
7. Groundwater and surface water monitoring systems maintenance;
8. Groundwater and surface water quality monitoring and reports;
9. Groundwater monitoring systems performance evaluations and reports;
10. Leachate control systems maintenance;
11. Leachate management, transportation and disposal;
12. Leachate control systems performance evaluations and reports;
13. Facility inspections and reports;
14. Engineering and technical services;
15. Legal, financial and administrative services; and
16. Financial assurance, accounting, audits and reports.

d. For publicly owned CND landfills, the owner or operator shall submit to the department a copy of the owner's or operator's most recent annual audit report in the form prescribed by the office of the auditor of the state of Iowa.

e. Privately held CND landfills shall submit an affidavit from the owner or operator indicating that a yearly review has been performed by a certified public accountant to determine whether the privately owned landfill is in compliance with this rule. The affidavit shall state the name of the certified public accountant, the dates and conclusions of the review, and the steps taken to rectify any deficiencies identified by the accountant.

114.31(5) Financial assurance for corrective action.

a. An owner or operator required to undertake corrective action pursuant to subrules 114.26(4) through 114.26(9), inclusive, must have a detailed written estimate prepared by an Iowa-licensed professional engineer, in current dollars, of the cost of hiring a third party to perform the required corrective action. The estimate must account for the total costs of the activities described in the approved corrective action plan for the entire corrective action period. The owner or operator must submit to the department the estimate and financial assurance documentation within 30 days of department approval of the corrective action plan.

(1) The owner or operator must annually adjust the estimate for inflation until the corrective action plan is completed.

(2) The owner or operator must increase the cost estimate and the amount of financial assurance provided if changes in the corrective action plan or CND landfill conditions increase the maximum cost of corrective action.

(3) The owner or operator may reduce the amount of the cost estimate and the amount of financial assurance provided if the estimate exceeds the maximum remaining costs of the remaining corrective action. The owner or operator must submit to the department the justification for the reduction of the cost estimate and documentation of financial assurance.

b. The owner or operator of a CND landfill required to undertake a corrective action plan must establish financial assurance for the most recent corrective action plan by one of the mechanisms prescribed in subrule 114.31(6). The owner or operator must provide continuous coverage for corrective action until released from financial assurance requirements by demonstrating compliance with the following:

(1) Upon completion of the remedy, the owner or operator must submit to the department a certification of compliance with the approved corrective action plan. The certification must be signed by the owner or operator and by an Iowa-licensed professional engineer.

(2) Upon department approval of completion of the corrective action remedy, the owner or operator shall be released from the requirements for financial assurance for corrective action.

114.31(6) Allowable financial assurance mechanisms. The mechanisms used to demonstrate financial assurance as required by Iowa Code Supplement section 455B.306(9)"a" must ensure that the funds necessary to meet the costs of closure, postclosure, and corrective action for known releases will be available whenever the funds are needed. Owners or operators must choose from options in paragraphs 114.31(6)"a" to "i."

a. Trust fund.

(1) An owner or operator may demonstrate financial assurance for closure, postclosure, or corrective action, whichever is applicable, by establishing a trust fund which conforms to the requirements of this subrule. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. A copy of the trust agreement must be submitted pursuant to subrules 114.31(3), 114.31(4), and 114.31(5) and placed in the facility's official files.

(2) Payments into the trust fund must be made annually by the owner or operator over ten years or over the remaining life of the CND landfill, whichever is shorter, in the case of a trust fund for closure or postclosure; or over one-half of the estimated length of the corrective action plan in the case of response to a known release. This period is referred to as the pay-in period.

(3) For a trust fund used to demonstrate financial assurance for closure and postclosure, the first payment into the fund must be at least equal to the amount specified in subrule 114.31(9) for closure or postclosure divided by the number of years in the pay-in period as defined in subparagraph 114.31(6)"a"(2). The amount of subsequent payments must be determined by the following formula:

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$$\text{Payment} = \frac{CE - CB}{Y}$$

where CE is the amount specified in subrule 114.31(9) for closure or postclosure (updated for inflation or other changes), CB is the current balance of the trust fund, and Y is the number of years remaining in the pay-in period.

(4) For a trust fund used to demonstrate financial assurance for corrective action, the first payment into the trust fund must be at least equal to one-half of the current cost estimate for corrective action divided by the number of years in the corrective action pay-in period as defined in subparagraph 114.31(6)"a"(2). The amount of subsequent payments must be determined by the following formula:

$$\text{Payment} = \frac{RB - CV}{Y}$$

where RB is the most recent estimate of the required trust fund balance for corrective action, which is the total cost that will be incurred during the second half of the corrective action period, CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(5) The initial payment into the trust fund must be made before the initial receipt of waste or before the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure; or no later than 120 days after the corrective action remedy has been approved by the department.

(6) The owner or operator, or other person authorized to conduct closure, postclosure, or corrective action activities, may request reimbursement from the trustee for these expenditures, including partial closure, as the expenditures are incurred. Requests for reimbursement will be granted by the trustee only if sufficient funds are remaining in the trust fund to cover the remaining costs of closure, postclosure, or corrective action and if justification and documentation of the costs are placed in the operating record. The owner or operator must submit to the department documentation of the justification for reimbursement and verification that reimbursement has been received.

(7) The trust fund may be terminated by the owner or operator only if the owner or operator substitutes alternative financial assurance as specified in this rule or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

(8) After the pay-in period has been completed, the trust fund shall be adjusted annually to correct any deficiency of the fund with respect to the adjusted cost estimate and may be adjusted annually should the balance in the fund exceed the adjusted cost estimate.

b. Surety bond guaranteeing payment or performance.

(1) An owner or operator may demonstrate financial assurance for closure or postclosure by obtaining a payment or performance surety bond which conforms to the requirements of this subrule. An owner or operator may demonstrate financial assurance for corrective action by obtaining a performance bond which conforms to the requirements of this subrule. The bond must be effective before the initial receipt of waste or before the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure; or no later than 120 days after the corrective action remedy has been approved by the department. The owner or operator must submit a copy of the bond to the department and keep a copy in the facility's official files. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury. The state shall not be considered a party to the surety bond.

(2) The penal sum of the bond must be in an amount at least equal to the amount specified in subrule 114.31(9) for closure and postclosure or corrective action, whichever is applicable.

(3) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond and also upon notice from the department pursuant to subparagraph 114.31(6)"b"(6).

(4) The owner or operator must establish a standby trust fund. The standby trust fund must meet the requirements of paragraph 114.31(6)"a" except the requirements for initial payment and subsequent annual payments specified in subparagraphs 114.31(6)"a"(2) through (5).

(5) Payments made under the terms of the bond will be deposited by the surety directly into the standby trust fund. Payments from the trust fund must be approved by the trustee and the department.

(6) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the department 120 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternative financial assurance, notice from the surety of withdrawal of the cancellation, or proof of a deposit into the standby trust fund of a sum equal to the amount of the bond. If the owner or operator has not complied with this subparagraph within the 60-day time period, this shall constitute a failure to perform and the department shall notify the surety, prior to the expiration of the 120-day notice period, that such a failure has occurred.

(7) The bond must be conditioned upon faithful performance by the owner or operator of all closure, postclosure, or corrective action requirements of the Code of Iowa and this rule. A failure to comply with subparagraph 114.31(6)"b"(6) shall also constitute a failure to perform under the terms of the bond.

(8) Liability under the bond shall be for the duration of the operation, closure, and postclosure period.

(9) The owner or operator may cancel the bond only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

c. Letter of credit.

(1) An owner or operator may demonstrate financial assurance for closure, postclosure, or corrective action, whichever is applicable, by obtaining an irrevocable standby letter of credit which conforms to the requirements of this paragraph. The letter of credit must be effective before the initial receipt of waste or before the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure; or no later than 120 days after the corrective action plan is approved by the department. The owner or operator must submit to the department a copy of the letter of credit and place a copy in the facility's official files. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

(2) A letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the name and address of the facility, and the amount of funds assured, must be included with the letter of credit submitted to the department and placed in the facility's files.

(3) The letter of credit must be irrevocable and issued for a period of at least one year in an amount at least equal to the amount specified in subrule 114.31(9) for closure, postclosure or corrective action, whichever is applicable. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the owner or operator and to the department 120 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternative financial assurance, notice of withdrawal of cancellation, or proof of a deposit of a sum equal to the amount of the letter of credit into the closure and postclosure accounts established pursuant to Iowa Code Supplement section 455B.306(9)"b." If the owner or operator has not complied with this subparagraph within the 60-day time period, the issuer of the letter of credit shall deposit a sum equal to the amount of the letter of credit into the closure and postclosure accounts established by the owner or operator pursuant to Iowa Code Supplement section 455B.306(9)"b." The provision of funds by the issuer of the letter of credit shall be considered an issuance of a loan to the owner or operator, and the terms of that loan shall be governed by the letter of credit or subsequent agreement between those parties. The state shall not be considered a party to this credit transaction.

(4) The owner or operator may cancel the letter of credit only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

d. Insurance.

(1) An owner or operator may demonstrate financial assurance for closure, postclosure, or corrective action by obtaining insurance which conforms to the requirements of this paragraph. The insurance must be effective before the initial receipt of waste or prior to cancellation of an alternative financial assurance, in the case of closure and postclosure; or no later than 120 days after the corrective action plan has been approved by the department. At a minimum, the insurer must be licensed to transact the business of insurance, or be eligible to provide insurance as an excess or surplus lines insurer, in one or more states. The owner or operator must submit to the department a copy of the insurance policy and retain a copy in the facility's official files.

(2) The closure or postclosure insurance policy must guarantee that funds will be available to close the CND landfill whenever final closure occurs or to provide postclosure for the CND landfill whenever the postclosure period begins, whichever is applicable. The policy must also guarantee that once closure or postclosure begins, the insurer will be responsible for the paying out of funds to the owner or operator or other person authorized to conduct closure or postclosure, up to an amount equal to the face amount of the policy.

(3) The insurance policy must be issued for a face amount at least equal to the amount specified in subrule 114.31(9) for closure, postclosure, or corrective action, whichever is applicable. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

(4) An owner or operator, or any other person authorized to conduct closure or postclosure, may receive reimbursements for closure or postclosure expenditures, including partial closure, as applicable. Requests for reimbursement will be granted by the insurer only if the remaining value of the policy is sufficient to cover the remaining costs of closure or postclosure, and if justification and documentation of the cost are placed in the operating record. The owner or operator must submit to the department documentation of the justification for reimbursement and verification that the reimbursement has been received.

(5) Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided that such consent is not unreasonably refused.

(6) The insurance policy must provide that the insurer may not cancel, terminate or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the owner or operator and to the department 120 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternative financial assurance, notice from the insurer of withdrawal of cancellation, or proof of a deposit of a sum equal to the amount of the insurance coverage into the closure and postclosure accounts established pursuant to Iowa Code Supplement section 455B.306(9)"b." If the owner or operator has not complied with this subparagraph within the 60-day time period, this shall constitute a failure to perform and shall be a covered event pursuant to the terms of the insurance policy. A failure by the owner or operator to comply with this subparagraph within the 60-day period shall make the insurer liable for the closure and postclosure of the covered facility up to the amount of the policy limits, which shall be equal to the most recently submitted cost estimates.

(7) For insurance policies providing coverage for postclosure, commencing on the date that liability to make payments pursuant to the policy accrues, the insurer will thereafter annually increase the face amount of the policy. Such increase must be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to 85 percent of the most recent investment rate or of the equivalent coupon-issue yield announced by the U.S. Treasury for 26-week treasury securities.

(8) The owner or operator may cancel the insurance only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

e. Corporate financial test. An owner or operator that satisfies the requirements of this paragraph may demonstrate financial assurance up to the amount specified below:

(1) Financial component. The owner or operator must satisfy the requirements of numbered paragraphs 114.31(6)"e"(1)"1," "2," and "3," to meet the financial component of the corporate financial test.

1. The owner or operator must satisfy one of the following three conditions:

- A current rating for its senior unsubordinated debt of AAA, AA, A, or BBB as issued by Standard & Poor's or Aaa, Aa, A or Baa as issued by Moody's; or
- A ratio of less than 1.5 comparing total liabilities to net worth (net worth calculations may not include future permitted capacity of the subject landfill as an asset); or

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• A ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus $10 million, to total liabilities;

2. The tangible net worth, excluding future permitted capacity of the subject landfill, of the owner or operator must be greater than:

• The sum of the current closure, postclosure, and corrective action cost estimates and any other environmental obligations, including guarantees, covered by this financial test plus $10 million except as provided in the second bulleted paragraph of numbered paragraph 114.31(6)"e"(1)"2"; or

• Net worth of $10 million, excluding future permitted capacity of the subject landfill, plus the amount of any guarantees that have not been recognized as liabilities on the financial statements, provided that all of the current closure, postclosure, and corrective action costs and any other environmental obligations covered by a financial test are recognized as liabilities on the owner's or operator's audited financial statements, and subject to the approval of the department; and

3. The owner or operator must have, located in the United States, assets, excluding future permitted capacity of the subject landfill, amounting to at least the sum of current closure, postclosure, and corrective action cost estimates and any other environmental obligations covered by a financial test as described in subparagraph 114.31(6)"e"(5).

(2) Record-keeping and reporting requirements. The owner or operator must submit the following records to the department and place a copy in the facility's official files prior to the initial receipt of solid waste or cancellation of an alternative financial assurance instrument, in the case of closure and postclosure; or no later than 120 days after the corrective action plan has been approved by the department:

1. A letter signed by a certified public accountant and based upon a certified audit that:

• Lists all the current cost estimates covered by a financial test including, but not limited to, cost estimates required by subrules 114.31(3) to 114.31(5); cost estimates required for municipal solid waste management facilities pursuant to 40 CFR Part 258; cost estimates required for UIC facilities under 40 CFR Part 144, if applicable; cost estimates required for petroleum underground storage tank facilities under 40 CFR Part 280, if applicable; cost estimates required for PCB storage facilities under 40 CFR Part 761, if applicable; and cost estimates required for hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, if applicable; and

• Provides evidence demonstrating that the owner or operator meets the conditions of subparagraph 114.31(6)"e"(1).

2. A copy of the independent certified public accountant's unqualified opinion of the owner's or operator's financial statements for the latest completed fiscal year. To be eligible to use the financial test, the owner's or operator's financial statements must receive an unqualified opinion from the independent certified public accountant. An adverse opinion or disclaimer of opinion shall be cause for disallowance of this mechanism. A qualified opinion related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance. If the department does not allow use of the corporate financial test, the owner or operator must provide alternative financial assurance that meets the requirements of this rule.

3. If the certified public accountant's letter providing evidence of financial assurance includes financial data which shows that the owner or operator satisfies subparagraph 114.31(6)"e"(1) but which differs from data in the audited financial statements referred to in numbered paragraph 114.31(6)"e"(2)"2," then a special report from the owner's or operator's independent certified public accountant to the owner or operator is required. The special report shall be based upon an agreed-upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the certified public accountant's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of that comparison, and the reasons for any differences.

4. If the certified public accountant's letter provides a demonstration that the owner or operator has assured for environmental obligations as provided in the second bulleted paragraph of numbered paragraph 114.31(6)"e"(2)"1," then the letter shall include a report from the independent certified public accountant that verifies that all of the environmental obligations covered by a financial test have been recognized as liabilities on the audited financial statements and that documents how these obligations have been measured and reported, and verifies that the tangible net worth of the owner or operator is at least $10 million plus the amount of any guarantees provided.

(3) The owner or operator may cease the submission of the information required by paragraph 114.31(6)"e" only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

(4) The department may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subparagraph 114.31(6)"e"(1), require the owner or operator to provide reports of its financial condition in addition to or including current financial test documentation as specified in subparagraph 114.31(6)"e"(2). If the department finds that the owner or operator no longer meets the requirements of subparagraph 114.31(6)"e"(1), the owner or operator must provide alternative financial assurance that meets the requirements of this rule.

(5) Calculation of costs to be assured. When calculating the current cost estimates for closure, postclosure, corrective action, or the sum of the combination of such costs to be covered, and any other environmental obligations assured by a financial test referred to in paragraph 114.31(6)"e," the owner or operator must include cost estimates required for subrules 114.31(3) to 114.31(5); cost estimates for municipal solid waste management facilities pursuant to 40 CFR Section 258.74; and cost estimates required for the following environmental obligations, if the owner or operator assures those environmental obligations through a financial test: obligations associated with UIC facilities under 40 CFR Part 144, petroleum underground storage tank facilities under 40 CFR Part 280, PCB storage facilities under 40 CFR Part 761, and hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265.

f. Local government financial test. An owner or operator that satisfies the requirements of this paragraph may demonstrate financial assurance up to the amount specified below:

(1) Financial component.

1. The owner or operator must satisfy one of the following requirements:

• If the owner or operator has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, the owner or opera-

tor must have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard & Poor's, on all such general obligation bonds; or

- The owner or operator must satisfy both of the following financial ratios based on the owner's or operator's most recent audited annual financial statement: a ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05, and a ratio of annual debt service to total expenditures less than or equal to 0.20.

2. The owner or operator must prepare its financial statements in conformity with Generally Accepted Accounting Principles or Other Comprehensive Bases of Accounting and have its financial statements audited by an independent certified public accountant or the office of the auditor of the state of Iowa. The financial statement shall be in the form prescribed by the office of the auditor of the state of Iowa.

3. A local government is not eligible to assure its obligations in paragraph 114.31(6)"f" if it:

- Is currently in default on any outstanding general obligation bonds; or
- Has any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard & Poor's; or
- Operated at a deficit equal to 5 percent or more of total annual revenue in each of the past two fiscal years; or
- Receives an adverse opinion or disclaimer of opinion from the independent certified public accountant or office of the auditor of the state of Iowa auditing its financial statement as required under numbered paragraph 114.31(6)"f"(1)"2." A qualified opinion that is related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance of this mechanism.

4. The following terms used in this paragraph are defined as follows:

- "Cash plus marketable securities" means all the cash plus marketable securities held by the local government on the last day of a fiscal year, excluding cash and marketable securities designated to satisfy past obligations such as pensions.
- "Debt service" means the amount of principal and interest due on a loan in a given time period, typically the current year.
- "Deficit" means total annual revenues minus total annual expenditures.
- "Total expenditures" means all expenditures, excluding capital outlays and debt repayment.
- "Total revenues" means revenues from all taxes and fees excluding revenue from funds managed by local government on behalf of a specific third party and does not include the proceeds from borrowing or asset sales.

(2) Public notice component. The local government owner or operator must include disclosure of the closure and postclosure costs assured through the financial test in its next annual audit report prior to the initial receipt of waste at the facility or prior to cancellation of an alternative financial assurance mechanism, whichever is later. A reference to corrective action costs must be placed in the next annual audit report after the corrective action plan is approved by the department. For the first year the financial test is used to assure costs at a particular facility, the reference may instead be placed in the facility's official files until issuance of the next available annual audit report if timing does not permit the reference to be incorporated into the most recently issued annual audit report or budget. For closure and postclosure costs, conformance with Governmental Accounting Standards Board Statement 18 ensures compliance with this public notice component.

(3) Record-keeping and reporting requirements.

1. The local government owner or operator must submit to the department the following items:

- A letter signed by the local government's chief financial officer that lists all the current cost estimates covered by a financial test, as described in subparagraph 114.31(6)"f"(4); provides evidence and certifies that the local government meets the conditions of numbered paragraphs 114.31(6)"f"(1)"1," "2," and "3"; and certifies that the local government meets the conditions of subparagraphs 114.31(6)"f"(2) and (4); and
- The local government's annual financial report indicating compliance with the financial ratios required by numbered paragraph 114.31(6)"f"(1)"1," second bulleted paragraph, if applicable, and the requirements of numbered paragraph 114.31(6)"f"(1)"2" and the third and fourth bulleted paragraphs of numbered paragraph 114.31(6)"f"(1)"3," and also indicating that the requirements of Governmental Accounting Standards Board Statement 18 have been met.

2. The items required in numbered paragraph 114.31(6)"f"(3)"1" must be submitted to the department and placed in the facility's official files prior to the receipt of waste or prior to the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure; or, in the case of corrective action, not later than 120 days after the corrective action plan is approved by the department.

3. After the initial submission of the required items and their placement in the facility's official files, the local government owner or operator must update the information and place the updated information in the facility's official files within 180 days following the close of the owner's or operator's fiscal year.

4. The owner or operator may cease the submission of the information required by paragraph 114.31(6)"f" only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

5. A local government must satisfy the requirements of the financial test at the close of each fiscal year. If the local government owner or operator no longer meets the requirements of the local government financial test, the local government must, within 180 days following the close of the owner's or operator's fiscal year, obtain alternative financial assurance that meets the requirements of this rule, place the required submissions for that assurance in the operating record, and notify the department that the owner or operator no longer meets the criteria of the financial test and that alternative financial assurance has been obtained.

6. The department, based on a reasonable belief that the local government owner or operator may no longer meet the requirements of the local government financial test, may require additional reports of financial conditions from the local government. If the department finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of the local government financial test, the local government must provide alternative financial assurance in accordance with this rule.

(4) Calculation of costs to be assured. The portion of the closure, postclosure, and corrective action costs which an owner or operator may assure under this paragraph is determined as follows:

1. If the local government owner or operator does not assure other environmental obligations through a financial test,

the owner or operator may assure closure, postclosure, and corrective action costs that equal up to 43 percent of the local government's total annual revenue.

2. If the local government assures other environmental obligations through a financial test, including those associated with UIC facilities under 40 CFR Section 144.62, petroleum underground storage tank facilities under 40 CFR Part 280, PCB storage facilities under 40 CFR Part 761, and hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, the owner or operator must add those costs to the closure, postclosure, and corrective action costs it seeks to assure under this paragraph. The total that may be assured must not exceed 43 percent of the local government's total annual revenue.

3. The owner or operator must obtain an alternative financial assurance instrument for those costs that exceed the limits set in numbered paragraphs 114.31(6)"f"(4)"1" and "2."

g. Corporate guarantee.

(1) An owner or operator may meet the requirements of this paragraph by obtaining a written guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, an owner or operator whose parent corporation is also the parent corporation of the owner or operator, or an owner or operator with a "substantial business relationship" with the owner or operator. The guarantor must meet the requirements for owners or operators in paragraph 114.31(6)"g" and must comply with the terms of the guarantee. A certified copy of the guarantee must be placed in the facility's operating record along with copies of the letter from a certified public accountant and the accountant's opinions. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter from the certified public accountant must describe the value received in consideration of the guarantee. If the guarantor is an owner or operator with a "substantial business relationship" with the owner or operator, this letter must describe this "substantial business relationship" and the value received in consideration of the guarantee.

(2) The guarantee must be effective and all required submissions made to the department prior to the initial receipt of waste or before cancellation of an alternative financial mechanism, in the case of closure and postclosure; or, in the case of corrective action, no later than 120 days after the corrective action plan has been approved by the department.

(3) The terms of the guarantee must provide that:

1. If the owner or operator fails to perform closure, postclosure, or corrective action of a facility covered by the guarantee, or fails to obtain alternative financial assurance within 90 days of notice of intent to cancel pursuant to numbered paragraphs 114.31(6)"g"(3)"2" and "3," the guarantor will:

- Perform, or pay a third party to perform, closure, postclosure, or corrective action as required (performance guarantee); or
- Establish a fully funded trust fund as specified in paragraph 114.31(6)"a" in the name of the owner or operator (payment guarantee); or
- Obtain alternative financial assurance as required by subparagraph 114.31(6)"g"(3)"3."

2. The guarantee will remain in force for as long as the owner or operator must comply with the applicable financial assurance requirements of this rule unless the guarantor sends prior notice of cancellation by certified mail to the owner or operator and to the department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the department, as evidenced by the return receipts.

3. If notice of cancellation is given, the owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator and the department, provide to the department adequate proof of alternative financial assurance, notice from the guarantor of withdrawal of the cancellation, or proof of the establishment of a fully funded trust fund pursuant to paragraph 114.31(6)"a." If the owner or operator fails to comply with the provisions of this numbered paragraph within the 90-day period, the guarantor must provide that alternative financial assurance prior to cancellation of the corporate guarantee.

(4) If a corporate guarantor no longer meets the requirements of paragraph 114.31(6)"e," the owner or operator must, within 90 days, obtain alternative financial assurance and submit proof of alternative financial assurance to the department. If the owner or operator fails to provide alternative financial assurance within the 90-day period, the guarantor must provide that alternative financial assurance within the next 30 days.

(5) The owner or operator is no longer required to meet the requirements of paragraph 114.31(6)"g" upon the submission to the department of proof of the substitution of alternative financial assurance or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

h. Local government guarantee. An owner or operator may demonstrate financial assurance for closure, postclosure, or corrective action by obtaining a written guarantee provided by a local government or jointly provided by the members of an agency established pursuant to Iowa Code chapter 28E. The guarantor must meet the requirements of the local government financial test in paragraph 114.31(6)"f" and must comply with the terms of a written guarantee.

(1) Terms of the written guarantee. The guarantee must be effective before the initial receipt of waste or before the cancellation of alternative financial assurance, in the case of closure and postclosure; or no later than 120 days after the corrective action plan is approved by the department. The guarantee must provide that:

1. If the owner or operator fails to perform closure, postclosure, or corrective action of a facility covered by the guarantee or fails to obtain alternative financial assurance within 90 days of notice of intent to cancel pursuant to numbered paragraphs 114.31(6)"h"(1)"2" and "3," the guarantor will:

- Perform, or pay a third party to perform, closure, postclosure, or corrective action as required; or
- Establish a fully funded trust fund as specified in paragraph 114.31(6)"a" in the name of the owner or operator; or
- Obtain alternative financial assurance as required by numbered paragraph 114.31(6)"h"(1)"3."

2. The guarantee will remain in force for as long as the owner or operator must comply with the applicable financial assurance requirements unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the department as evidenced by the return receipts.

3. If notice of cancellation is given, the owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator and the department, provide to the department adequate proof of alternative financial assurance, notice from the guarantor of withdrawal of the cancellation, or proof of the establishment of a fully funded trust

fund pursuant to paragraph 114.31(6)"a." If the owner or operator fails to comply with the provisions of this numbered paragraph within the 90-day period, the guarantor must provide that alternative financial assurance prior to cancellation of the guarantee.

(2) Record-keeping and reporting requirements.

1. The owner or operator must submit to the department a certified copy of the guarantee along with the items required under subparagraph 114.31(6)"f"(3) and place a copy in the facility's official files before the initial receipt of waste or before cancellation of alternative financial assurance, whichever is later, in the case of closure and postclosure; or no later than 120 days after the corrective action plan has been approved by the department.

2. The owner or operator shall no longer be required to submit the items specified in numbered paragraph 114.31(6)"h"(2)"1" when proof of alternative financial assurance has been submitted to the department or the owner or operator is no longer required to provide financial assurance pursuant to this rule.

3. If a local government guarantor no longer meets the requirements of paragraph 114.31(6)"f," the owner or operator must, within 90 days, submit to the department proof of alternative financial assurance. If the owner or operator fails to obtain alternative financial assurance within the 90-day period, the guarantor must provide that alternative financial assurance within the next 30 days.

i. Local government dedicated fund. The owner or operator of a publicly owned CND landfill or local government serving as a guarantor may demonstrate financial assurance for closure, postclosure, or corrective action, whichever is applicable, by establishing a dedicated fund or account that conforms to the requirements of this paragraph. A dedicated fund will be considered eligible if it complies with subparagraph 114.31(6)"i"(1) or (2), and all other provisions of this paragraph, and documentation of this compliance has been submitted to the department.

(1) The fund shall be dedicated by state constitutional provision or local government statute, charter, ordinance, or order to pay for closure, postclosure, or corrective action costs that arises from the operation of the CND landfill and shall be funded for the full amount of coverage or funded for part of the required amount of coverage and used in combination with another mechanism(s) that provides the remaining coverage.

(2) The fund shall be dedicated by state constitutional provision or local government statute, charter, ordinance, or order as a reserve fund and shall be funded for no less than the full amount of coverage or funded for part of the required amount of coverage and used in combination with another mechanism(s) that provides the remaining coverage.

(3) Payments into the dedicated fund must be made annually by the owner or operator for ten years or over the permitted life of the CND landfill, whichever is shorter, in the case of a dedicated fund for closure or postclosure; or over one-half of the estimated length of an approved corrective action plan in the case of a response to a known release. This is referred to as the pay-in period. The initial payment into the dedicated fund must be made before the initial receipt of waste in the case of closure and postclosure or no later than 120 days after the corrective action plan has been approved by the department.

(4) For a dedicated fund used to demonstrate financial assurance for closure and postclosure, the first payment into the dedicated fund must be at least equal to the amount specified in subrule 114.31(9), divided by the number of years in the pay-in period as defined in paragraph 114.31(6)"i." The amount of subsequent payments must be determined by the following formula:

$$\text{Payment} = \frac{CE - CB}{Y}$$

where CE is the total required financial assurance for the owner or operator, CB is the current balance of the fund, and Y is the number of years remaining in the pay-in period.

(5) For a dedicated fund used to demonstrate financial assurance for corrective action, the first payment into the dedicated fund must be at least one-half of the current cost estimate, divided by the number of years in the corrective action pay-in period as defined in paragraph 114.31(6)"i." The amount of subsequent payments must be determined by the following formula:

$$\text{Payment} = \frac{RB - CF}{Y}$$

where RB is the most recent estimate of the required dedicated fund balance, which is the total cost that will be incurred during the second half of the corrective action period, CF is the current amount in the dedicated fund, and Y is the number of years remaining in the pay-in period.

(6) The initial payment into the dedicated fund must be made before the initial receipt of waste or before the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure; or no later than 120 days after the corrective action remedy has been approved by the department.

(7) After the pay-in period has been completed, the dedicated fund shall be adjusted annually to correct any deficiency of the fund with respect to the adjusted cost estimate and may be adjusted annually should the balance in the fund exceed the adjusted cost estimate.

114.31(7) General requirements.

a. Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of this rule by establishing more than one financial mechanism per facility. The mechanisms must be a combination of those mechanisms outlined in this rule and must provide financial assurance for an amount at least equal to the current cost estimate for closure, postclosure, or corrective action, whichever is applicable. The financial test and a guarantee provided by a corporate parent, sibling or grandparent may not be combined if the financial statements of the two entities are consolidated.

b. Use of one mechanism for multiple facilities. An owner or operator may satisfy the requirements of this rule for multiple CND landfills by the use of one mechanism if the owner or operator ensures that the mechanism provides financial assurance for an amount at least equal to the current cost estimates for closure, postclosure, or corrective action, whichever is applicable, for all CND landfills covered.

c. Criteria. The language of the financial assurance mechanisms listed in this rule must ensure that the instruments satisfy the following criteria:

(1) The financial assurance mechanisms must ensure that the amount of funds assured is sufficient to cover the costs of closure, postclosure, or corrective action for known releases, whichever is applicable;

(2) The financial assurance mechanisms must ensure that funds will be available in a timely fashion when needed;

(3) The financial assurance mechanisms must be obtained by the owner or operator prior to the initial receipt of solid waste and no later than 120 days after the corrective action remedy has been approved by the department until the owner

or operator is released from the financial assurance requirements; and

(4) The financial assurance mechanisms must be legally valid, binding, and enforceable under Iowa law.

d. No permit shall be issued by the department pursuant to Iowa Code Supplement section 455B.305 unless the applicant has demonstrated compliance with rule 114.31(455B).

114.31(8) Closure and postclosure accounts. The holder of a permit for a CND landfill shall maintain a separate account for closure and postclosure as required by Iowa Code Supplement section 455B.306(9)"b." The account shall be specific to a particular facility.

a. Definitions. For the purpose of this subrule, the following definitions shall apply:

"Account" means a formal separate set of records.

"Current balance" means cash in an account established pursuant to this subrule plus the current value of investments of moneys collected pursuant to subrule 114.31(8) and used to purchase one or more of the investments listed in Iowa Code section 12B.10(5).

"Current cost estimate" means the closure cost estimate prepared and submitted to the department pursuant to subrule 114.31(3) and the postclosure cost estimate prepared and submitted pursuant to subrule 114.31(4).

b. Moneys in the accounts shall not be assigned for the benefit of creditors except the state of Iowa.

c. Moneys in the accounts shall not be used to pay any final judgment against a permit holder arising out of the ownership or operation of the site during its active life or after closure.

d. Withdrawal of funds. Except as provided in paragraph 114.31(8)"e," moneys in the accounts may be withdrawn without department approval only for the purpose of funding closure, including partial closure, or postclosure activities that are in conformance with a closure/postclosure plan which has been submitted pursuant to subrule 114.13(10). Withdrawals for activities not in conformance with a closure/postclosure plan must receive prior written approval from the department. Permit holders using a trust fund established pursuant to paragraph 114.31(6)"a" to satisfy the requirements of this rule must comply with the requirements of subparagraph 114.31(6)"a"(6) prior to withdrawal.

e. Excess funds. If the balance of a closure or postclosure account exceeds the current cost estimate for closure or postclosure at any time, the permit holder may withdraw the excess funds so long as the withdrawal does not cause the balance to be reduced below the amount of the current cost estimate.

f. Initial proof of establishment of account. A permit holder shall submit a statement of account, signed by the permit holder, to the department by April 1, 2008, that indicates that accounts have been established pursuant to this subrule. Permit holders for new CND landfills permitted after April 1, 2008, shall submit to the department, prior to the landfill's initial receipt of waste, a statement of account, signed by the permit holder.

g. An account established pursuant to paragraph 114.31(6)"a" for trust funds or paragraph 114.31(6)"i" for local government dedicated funds also satisfies the requirements of this subrule, and the permit holder shall not be required to establish closure and postclosure accounts in addition to said financial assurance accounts.

Accounts established pursuant to paragraphs 114.31(6)"a" or 114.31(6)"i," which are intended to satisfy the requirements of this subrule, must comply with Iowa Code Supplement section 455B.306(9)"b."

h. Yearly deposits. Deposits into the closure and postclosure accounts shall be made at least yearly in the amounts specified in this subrule beginning with the close of the facility's first fiscal year that begins after [the effective date of this rule]. The deposits shall be made within 30 days of the close of each fiscal year. The minimum yearly deposit to the closure and postclosure accounts shall be determined using the following formula:

$$\frac{CE - CB}{RPC} \times TR = \text{yearly deposit to account}$$

Where:

"CE" means the current cost estimate of closure and postclosure costs.

"CB" means the current balance of the closure or postclosure accounts.

"RPC" means the remaining permitted capacity, in tons, of the landfill as of the start of the permit holder's fiscal year.

"TR" is the number of tons of solid waste disposed of at the facility in the prior year.

i. Closure and postclosure accounts may be commingled with other accounts so long as the amounts credited to each account balance are reported separately pursuant to paragraphs 114.31(3)"a" and 114.31(4)"a."

j. The department shall have full rights of access to all funds existing in a facility's closure or postclosure account, at the sole discretion of the department, if the permit holder fails to undertake closure or postclosure activities after being directed to do so by a final agency action of the department. These funds shall be used only for the purposes of funding closure and postclosure activities at the site.

114.31(9) Amount of required financial assurance. A financial assurance mechanism established pursuant to subrule 114.31(6) shall be in the amount of the third-party cost estimates required by subrules 114.31(3), 114.31(4), and 114.31(5) except that the amount of the financial assurance may be reduced by the sum of the cash balance in a trust fund or local government dedicated fund established to comply with subrule 114.31(8) plus the current value of investments held by said trust fund or local government dedicated fund if invested in one or more of the investments listed in Iowa Code section 12B.10(5).

ITEM 7. Amend 567—Chapter 115 by adopting the following **new** rule:

567—115.31(455B) Industrial monofill sanitary landfill financial assurance.

115.31(1) Purpose. The purpose of this rule is to implement Iowa Code section 455B.304(8) and Supplement section 455B.306(9) by providing the criteria for establishing financial assurance for closure, postclosure and corrective action at industrial monofill landfills (IMF landfills).

115.31(2) Applicability. The requirements of this rule apply to all owners and operators of IMF landfills accepting waste as of [the effective date of this rule] except owners or operators that are state or federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States.

115.31(3) Financial assurance for closure. The owner or operator of an IMF landfill must establish financial assurance for closure in accordance with the criteria in this rule. The owner or operator must provide continuous coverage for closure until released from this requirement by demonstrating compliance with subrules 115.26(13) and 115.13(10). Proof of compliance pursuant to paragraphs 115.31(3)"a" through "e" must be submitted by the owner or operator yearly by April 1 and approved by the department.

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a. The owner or operator shall submit the current version of department Form 542-8090, Sanitary Landfill Financial Assurance Report Form, which contains, but is not limited to, the amount of the financial assurance, the annual financial statement required by Iowa Code Supplement sections 455B.306(9)"e" and 455B.306(7)"c," and the current balances of the closure and postclosure accounts at the time of submittal as required by Iowa Code Supplement section 455B.306(9)"b."

b. The owner or operator shall submit a copy of the financial assurance instruments or the documents establishing the financial assurance instruments in an amount equal to or greater than the amount specified in subrule 115.31(9). Documentation for the mechanism(s) used to demonstrate financial assurance shall contain, at a minimum, the items required to be submitted as specified in paragraphs 115.31(6)"a" to "i."

c. The owner or operator shall submit a detailed written estimate, in current dollars, certified by an Iowa-licensed professional engineer, of the cost of hiring a third party to close the IMF landfill in accordance with the closure plan as required by subrules 115.26(13) and 115.13(10). Such estimate must be available at any time during the active life of the landfill.

(1) The cost estimate must equal the cost of closing the IMF landfill at any time during the permitted life of the facility when the extent and manner of its operation would make closure the most expensive.

(2) The costs contained in the third-party estimate for closure must be accurate and reasonable when compared to the cost estimates used by other similarly situated landfills in Iowa.

(3) During the active life of the landfill, the owner or operator must annually adjust the closure cost estimate for inflation.

(4) The owner or operator must, annually or at the time of application for a permit amendment that increases closure costs, whichever occurs first, increase the closure cost estimate and the amount of financial assurance provided if changes to the closure plan or IMF landfill conditions increase the maximum cost of closure at any time during the remaining active life of the facility.

(5) The owner or operator may reduce the amount of financial assurance for closure if the most recent estimate of the maximum cost of closure at any time during the active life of the facility is less than the amount of financial assurance currently provided. Prior to the reduction, the owner or operator must submit to the department the justification for the reduction of the closure cost estimate and the updated documentation required by paragraphs 115.31(3)"a" through "e" and receive department approval for the reduction. Approval or denial shall be issued within 30 days of receipt of the reduction request.

(6) The third-party estimate submitted to the department must include the site area subject to closure and account for at least the following factors determined by the department to be minimal necessary costs for closure:

1. Closure and postclosure plan document revisions;
2. Site preparation, earthwork and final grading;
3. Drainage control culverts, piping and structures;
4. Erosion control structures, sediment ponds and terraces;
5. Final cap construction;
6. Cap vegetation soil placement;
7. Cap seeding, mulching and fertilizing;
8. Monitoring well, piezometer and gas control modifications;
9. Leachate system cleanout and extraction well modifications;
10. Monitoring well installations and abandonments;
11. Facility modifications to effect closed status;
12. Engineering and technical services;
13. Legal, financial and administrative services; and
14. Closure compliance certifications and documentation.

d. For publicly owned IMF landfills, the owner or operator shall submit to the department a copy of the owner's or operator's most recent annual audit report in the form prescribed by the office of the auditor of the state of Iowa.

e. Privately held IMF landfills shall submit an affidavit from the owner or operator indicating that a yearly review has been performed by a certified public accountant to determine whether the privately owned landfill is in compliance with this rule. The affidavit shall state the name of the certified public accountant, the dates and conclusions of the review, and the steps taken to rectify any deficiencies identified by the accountant.

115.31(4) Financial assurance for postclosure. The owner or operator of an IMF landfill must establish financial assurance for the costs of postclosure in accordance with the criteria in this rule. The owner or operator must provide continuous coverage for postclosure until released from this requirement by demonstrating compliance with the postclosure plan and the closure permit. Proof of compliance pursuant to paragraphs 115.31(4)"a" through "e" must be submitted by the owner or operator yearly by April 1 and approved by the department.

a. The owner or operator shall submit the current version of department Form 542-8090, Sanitary Landfill Financial Assurance Report Form, which contains, but is not limited to, the amount of the financial assurance, the annual financial statement required by Iowa Code Supplement sections 455B.306(9)"e" and 455B.306(7)"c," and the current balances of the closure and postclosure accounts required by Iowa Code Supplement section 455B.306(9)"b."

b. The owner or operator shall submit a copy of the documents establishing a financial assurance instrument in an amount equal to or greater than the amount specified in subrule 115.31(9). Documentation for the mechanism(s) used to demonstrate financial assurance shall contain, at a minimum, the items required to be submitted as specified in paragraphs 115.31(6)"a" to "i."

c. The owner or operator shall submit a detailed written estimate, in current dollars, certified by an Iowa-licensed professional engineer, of the cost of hiring a third party to conduct postclosure for the IMF landfill in compliance with the postclosure plan developed pursuant to subrules 115.26(14) and 115.13(10). The cost estimate must account for the total cost of conducting postclosure, as described in the plan, for the entire postclosure period.

(1) The cost estimate for postclosure must be based on the most expensive costs of postclosure during the entire postclosure period.

(2) The costs contained in the third-party estimate for postclosure must be accurate and reasonable when compared to the cost estimates used by other similarly situated landfills in Iowa.

(3) During the active life of the IMF landfill and during the postclosure period, the owner or operator must annually adjust the postclosure cost estimate for inflation.

(4) The owner or operator must, annually or at the time of application for a permit amendment that increases postclo-

sure costs, whichever occurs first, increase the estimate and the amount of financial assurance provided if changes in the postclosure plan or IMF landfill conditions increase the maximum cost of postclosure.

(5) The owner or operator may reduce the amount of financial assurance for postclosure if the most recent estimate of the maximum cost of postclosure beginning at any time during the active life of the facility is less than the amount of financial assurance currently provided. Prior to the reduction, the owner or operator must submit to the department the justification for the reduction of the postclosure cost estimate and the updated documentation required by paragraphs 115.31(4)"a" through "e" and must receive department approval for the reduction. Approval or denial shall be issued within 30 days of receipt of the reduction request.

(6) The third-party estimate submitted to the department must include the site area subject to postclosure and account for at least the following factors determined by the department to be minimal necessary costs for postclosure:

1. General site facilities, access roads and fencing maintenance;
2. Cap and vegetative cover maintenance;
3. Drainage and erosion control systems maintenance;
4. Groundwater to waste separation systems maintenance;
5. Gas control systems maintenance;
6. Gas control systems monitoring and reports;
7. Groundwater and surface water monitoring systems maintenance;
8. Groundwater and surface water quality monitoring and reports;
9. Groundwater monitoring systems performance evaluations and reports;
10. Leachate control systems maintenance;
11. Leachate management, transportation and disposal;
12. Leachate control systems performance evaluations and reports;
13. Facility inspections and reports;
14. Engineering and technical services;
15. Legal, financial and administrative services; and
16. Financial assurance, accounting, audits and reports.

d. For publicly owned IMF landfills, the owner or operator shall submit to the department a copy of the owner's or operator's most recent annual audit report in the form prescribed by the office of the auditor of the state of Iowa.

e. Privately held IMF landfills shall submit an affidavit from the owner or operator indicating that a yearly review has been performed by a certified public accountant to determine whether the privately owned landfill is in compliance with this rule. The affidavit shall state the name of the certified public accountant, the dates and conclusions of the review, and the steps taken to rectify any deficiencies identified by the accountant.

115.31(5) Financial assurance for corrective action.

a. An owner or operator required to undertake corrective action pursuant to subrules 115.26(4) through 115.26(9) must have a detailed written estimate, in current dollars, prepared by an Iowa-licensed professional engineer, of the cost of hiring a third party to perform the required corrective action. The estimate must account for the total costs of the activities described in the approved corrective action plan for the entire corrective action period. The owner or operator must submit to the department the estimate and financial assurance documentation within 30 days of department approval of the corrective action plan.

(1) The owner or operator must annually adjust the estimate for inflation until the corrective action plan is completed.

(2) The owner or operator must increase the cost estimate and the amount of financial assurance provided if changes in the corrective action plan or IMF landfill conditions increase the maximum cost of corrective action.

(3) The owner or operator may reduce the amount of the cost estimate and the amount of financial assurance provided if the estimate exceeds the maximum remaining costs of the remaining corrective action. The owner or operator must submit to the department the justification for the reduction of the cost estimate and documentation of financial assurance.

b. The owner or operator of an IMF landfill required to undertake a corrective action plan must establish financial assurance for the most recent corrective action plan by one of the mechanisms prescribed in subrule 115.31(6). The owner or operator must provide continuous coverage for corrective action until released from financial assurance requirements by demonstrating compliance with the following:

(1) Upon completion of the remedy, the owner or operator must submit to the department a certification of compliance with the approved corrective action plan. The certification must be signed by the owner or operator and by an Iowa-licensed professional engineer.

(2) Upon department approval of completion of the corrective action remedy, the owner or operator shall be released from the requirements for financial assurance for corrective action.

115.31(6) Allowable financial assurance mechanisms. The mechanisms used to demonstrate financial assurance as required by Iowa Code Supplement section 455B.306(9)"a" must ensure that the funds necessary to meet the costs of closure, postclosure, and corrective action for known releases will be available whenever the funds are needed. Owners or operators must choose from options in paragraphs 115.31(6)"a" to "i."

a. Trust fund.

(1) An owner or operator may demonstrate financial assurance for closure, postclosure, or corrective action, whichever is applicable, by establishing a trust fund which conforms to the requirements of this subrule. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. A copy of the trust agreement must be submitted pursuant to subrules 115.31(3), 115.31(4), and 115.31(5) and placed in the facility's official files.

(2) Payments into the trust fund must be made annually by the owner or operator over ten years or over the remaining life of the IMF landfill, whichever is shorter, in the case of a trust fund for closure or postclosure; or over one-half of the estimated length of the corrective action plan in the case of response to a known release. This period is referred to as the pay-in period.

(3) For a trust fund used to demonstrate financial assurance for closure and postclosure, the first payment into the fund must be at least equal to the amount specified in subrule 115.31(9) for closure or postclosure divided by the number of years in the pay-in period as defined in subparagraph 115.31(6)"a"(2). The amount of subsequent payments must be determined by the following formula:

$$\text{Payment} = \frac{CE - CB}{Y}$$

where CE is the amount specified in subrule 115.31(9) for closure or postclosure (updated for inflation or other

changes), CB is the current balance of the trust fund, and Y is the number of years remaining in the pay-in period.

(4) For a trust fund used to demonstrate financial assurance for corrective action, the first payment into the trust fund must be at least equal to one-half of the current cost estimate for corrective action divided by the number of years in the corrective action pay-in period as defined in subparagraph 115.31(6)"a"(2). The amount of subsequent payments must be determined by the following formula:

$$\text{Payment} = \frac{RB - CV}{Y}$$

where RB is the most recent estimate of the required trust fund balance for corrective action, which is the total cost that will be incurred during the second half of the corrective action period, CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(5) The initial payment into the trust fund must be made before the initial receipt of waste or before the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure; or no later than 120 days after the corrective action remedy has been approved by the department.

(6) The owner or operator, or other person authorized to conduct closure, postclosure, or corrective action activities, may request reimbursement from the trustee for these expenditures, including partial closure, as the expenditures are incurred. Requests for reimbursement will be granted by the trustee only if sufficient funds are remaining in the trust fund to cover the remaining costs of closure, postclosure, or corrective action and if justification and documentation of the costs are placed in the operating record. The owner or operator must submit to the department documentation of the justification for reimbursement and verification that reimbursement has been received.

(7) The trust fund may be terminated by the owner or operator only if the owner or operator substitutes alternative financial assurance as specified in this rule or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

(8) After the pay-in period has been completed, the trust fund shall be adjusted annually to correct any deficiency of the fund with respect to the adjusted cost estimate and may be adjusted annually should the balance in the fund exceed the adjusted cost estimate.

b. Surety bond guaranteeing payment or performance.

(1) An owner or operator may demonstrate financial assurance for closure or postclosure by obtaining a payment or performance surety bond which conforms to the requirements of this subrule. An owner or operator may demonstrate financial assurance for corrective action by obtaining a performance bond which conforms to the requirements of this subrule. The bond must be effective before the initial receipt of waste or before the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure; or no later than 120 days after the corrective action remedy has been approved by the department. The owner or operator must submit a copy of the bond to the department and keep a copy in the facility's official files. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury. The state shall not be considered a party to the surety bond.

(2) The penal sum of the bond must be in an amount at least equal to the amount specified in subrule 115.31(9) for closure and postclosure or corrective action, whichever is applicable.

(3) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond and also upon notice from the department pursuant to subparagraph 115.31(6)"b"(6).

(4) The owner or operator must establish a standby trust fund. The standby trust fund must meet the requirements of paragraph 115.31(6)"a" except the requirements for initial payment and subsequent annual payments specified in subparagraphs 115.31(6)"a"(2) through (5).

(5) Payments made under the terms of the bond will be deposited by the surety directly into the standby trust fund. Payments from the trust fund must be approved by the trustee and the department.

(6) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner or operator and to the department 120 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternative financial assurance, notice from the surety of withdrawal of the cancellation, or proof of a deposit into the standby trust fund of a sum equal to the amount of the bond. If the owner or operator has not complied with this subparagraph within the 60-day time period, this shall constitute a failure to perform and the department shall notify the surety, prior to the expiration of the 120-day notice period, that such a failure has occurred.

(7) The bond must be conditioned upon faithful performance by the owner or operator of all closure, postclosure, or corrective action requirements of the Code of Iowa and this rule. A failure to comply with subparagraph 115.31(6)"b"(6) shall also constitute a failure to perform under the terms of the bond.

(8) Liability under the bond shall be for the duration of the operation, closure, and postclosure period.

(9) The owner or operator may cancel the bond only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

c. Letter of credit.

(1) An owner or operator may demonstrate financial assurance for closure, postclosure, or corrective action, whichever is applicable, by obtaining an irrevocable standby letter of credit which conforms to the requirements of this paragraph. The letter of credit must be effective before the initial receipt of waste or before the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure; or no later than 120 days after the corrective action plan is approved by the department. The owner or operator must submit to the department a copy of the letter of credit and place a copy in the facility's official files. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

(2) A letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the name and address of the facility, and the amount of funds assured, must be included with the letter of credit submitted to the department and placed in the facility's files.

(3) The letter of credit must be irrevocable and issued for a period of at least one year in an amount at least equal to the amount specified in subrule 115.31(9) for closure, postclosure or corrective action, whichever is applicable. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the owner or opera-

tor and to the department 120 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternative financial assurance, notice of withdrawal of cancellation, or proof of a deposit of a sum equal to the amount of the letter of credit into the closure and postclosure accounts established pursuant to Iowa Code Supplement section 455B.306(9)"b." If the owner or operator has not complied with this subparagraph within the 60-day time period, the issuer of the letter of credit shall deposit a sum equal to the amount of the letter of credit into the closure and postclosure accounts established by the owner or operator pursuant to Iowa Code Supplement section 455B.306(9)"b." The provision of funds by the issuer of the letter of credit shall be considered an issuance of a loan to the owner or operator, and the terms of that loan shall be governed by the letter of credit or subsequent agreement between those parties. The state shall not be considered a party to this credit transaction.

(4) The owner or operator may cancel the letter of credit only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

d. Insurance.

(1) An owner or operator may demonstrate financial assurance for closure, postclosure, or corrective action by obtaining insurance which conforms to the requirements of this paragraph. The insurance must be effective before the initial receipt of waste or prior to cancellation of an alternative financial assurance, in the case of closure and postclosure; or no later than 120 days after the corrective action plan has been approved by the department. At a minimum, the insurer must be licensed to transact the business of insurance, or be eligible to provide insurance as an excess or surplus lines insurer, in one or more states. The owner or operator must submit to the department a copy of the insurance policy and retain a copy in the facility's official files.

(2) The closure or postclosure insurance policy must guarantee that funds will be available to close the IMF landfill whenever final closure occurs or to provide postclosure for the IMF landfill whenever the postclosure period begins, whichever is applicable. The policy must also guarantee that once closure or postclosure begins, the insurer will be responsible for the paying out of funds to the owner or operator or other person authorized to conduct closure or postclosure, up to an amount equal to the face amount of the policy.

(3) The insurance policy must be issued for a face amount at least equal to the amount specified in subrule 115.31(9) for closure, postclosure, or corrective action, whichever is applicable. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

(4) An owner or operator, or any other person authorized to conduct closure or postclosure, may receive reimbursements for closure or postclosure expenditures, including partial closure, as applicable. Requests for reimbursement will be granted by the insurer only if the remaining value of the policy is sufficient to cover the remaining costs of closure or postclosure, and if justification and documentation of the cost are placed in the operating record. The owner or operator must submit to the department documentation of the justification for reimbursement and verification that the reimbursement has been received.

(5) Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided that such consent is not unreasonably refused.

(6) The insurance policy must provide that the insurer may not cancel, terminate or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the owner or operator and to the department 120 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternative financial assurance, notice from the insurer of withdrawal of cancellation, or proof of a deposit of a sum equal to the amount of the insurance coverage into the closure and postclosure accounts established pursuant to Iowa Code Supplement section 455B.306(9)"b." If the owner or operator has not complied with this subparagraph within the 60-day time period, this shall constitute a failure to perform and shall be a covered event pursuant to the terms of the insurance policy. A failure by the owner or operator to comply with this subparagraph within the 60-day period shall make the insurer liable for the closure and postclosure of the covered facility up to the amount of the policy limits, which shall be equal to the most recently submitted cost estimates.

(7) For insurance policies providing coverage for postclosure, commencing on the date that liability to make payments pursuant to the policy accrues, the insurer will thereafter annually increase the face amount of the policy. Such increase must be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to 85 percent of the most recent investment rate or of the equivalent coupon-issue yield announced by the U.S. Treasury for 26-week treasury securities.

(8) The owner or operator may cancel the insurance only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

e. Corporate financial test. An owner or operator that satisfies the requirements of this paragraph may demonstrate financial assurance up to the amount specified below:

(1) Financial component. The owner or operator must satisfy the requirements of numbered paragraphs 115.31(6)"e"(1)"1," "2," and "3" to meet the financial component of the corporate financial test.

1. The owner or operator must satisfy one of the following three conditions:

- A current rating for its senior unsubordinated debt of AAA, AA, A, or BBB as issued by Standard & Poor's or Aaa, Aa, A or Baa as issued by Moody's; or
- A ratio of less than 1.5 comparing total liabilities to net worth (net worth calculations may not include future permitted capacity of the subject landfill as an asset); or
- A ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus $10 million, to total liabilities;

2. The tangible net worth, excluding future permitted capacity of the subject landfill, of the owner or operator must be greater than:

- The sum of the current closure, postclosure, and corrective action cost estimates and any other environmental obligations, including guarantees, covered by this financial test

plus $10 million except as provided in the second bulleted paragraph in numbered paragraph 115.31(6)"e"(1)"2"; or

- Net worth of $10 million, excluding future permitted capacity of the subject landfill, plus the amount of any guarantees that have not been recognized as liabilities on the financial statements, provided that all of the current closure, postclosure, and corrective action costs and any other environmental obligations covered by a financial test are recognized as liabilities on the owner's or operator's audited financial statements, and are subject to the approval of the department; and

3. The owner or operator must have, located in the United States, assets, excluding future permitted capacity of the subject landfill, amounting to at least the sum of current closure, postclosure, and corrective action cost estimates and any other environmental obligations covered by a financial test as described in subparagraph 115.31(6)"e"(5).

(2) Record-keeping and reporting requirements. The owner or operator must submit the following records to the department and place a copy in the facility's official files prior to the initial receipt of solid waste or cancellation of an alternative financial assurance instrument, in the case of closure and postclosure; or no later than 120 days after the corrective action plan has been approved by the department:

1. A letter signed by a certified public accountant and based upon a certified audit that:

- Lists all the current cost estimates covered by a financial test including, but not limited to, cost estimates required by subrules 115.31(3) to 115.31(5); cost estimates required for municipal solid waste management facilities pursuant to 40 CFR Part 258; cost estimates required for UIC facilities under 40 CFR Part 144, if applicable; cost estimates required for petroleum underground storage tank facilities under 40 CFR Part 280, if applicable; cost estimates required for PCB storage facilities under 40 CFR Part 761, if applicable; and cost estimates required for hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, if applicable; and
- Provides evidence demonstrating that the owner or operator meets the conditions of subparagraph 115.31(6)"e"(1).

2. A copy of the independent certified public accountant's unqualified opinion of the owner's or operator's financial statements for the latest completed fiscal year. To be eligible to use the financial test, the owner's or operator's financial statements must receive an unqualified opinion from the independent certified public accountant. An adverse opinion or disclaimer of opinion shall be cause for disallowance of this mechanism. A qualified opinion related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance. If the department does not allow use of the corporate financial test, the owner or operator must provide alternative financial assurance that meets the requirements of this rule.

3. If the certified public accountant's letter providing evidence of financial assurance includes financial data which shows that the owner or operator satisfies subparagraph 115.31(6)"e"(1) but which differs from data in the audited financial statements referred to in numbered paragraph 115.31(6)"e"(2)"2," then a special report from the owner's or operator's independent certified public accountant to the owner or operator is required. The special report shall be based upon an agreed-upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the certified public accountant's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of that comparison, and the reasons for any differences.

4. If the certified public accountant's letter provides a demonstration that the owner or operator has assured for environmental obligations as provided in the second bulleted paragraph of numbered paragraph 115.31(6)"e"(2)"1," then the letter shall include a report from the independent certified public accountant that verifies that all of the environmental obligations covered by a financial test have been recognized as liabilities on the audited financial statements and that documents how these obligations have been measured and reported, and verifies that the tangible net worth of the owner or operator is at least $10 million plus the amount of any guarantees provided.

(3) The owner or operator may cease the submission of the information required by paragraph 115.31(6)"e" only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

(4) The department may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subparagraph 115.31(6)"e"(1), require the owner or operator to provide reports of its financial condition in addition to or including current financial test documentation as specified in subparagraph 115.31(6)"e"(2). If the department finds that the owner or operator no longer meets the requirements of subparagraph 115.31(6)"e"(1), the owner or operator must provide alternative financial assurance that meets the requirements of this rule.

(5) Calculation of costs to be assured. When calculating the current cost estimates for closure, postclosure, corrective action, or the sum of the combination of such costs to be covered, and any other environmental obligations assured by a financial test referred to in paragraph 115.31(6)"e," the owner or operator must include cost estimates required for subrules 115.31(3) to 115.31(5); cost estimates for municipal solid waste management facilities pursuant to 40 CFR Section 258.74; and cost estimates required for the following environmental obligations, if the owner or operator assures those environmental obligations through a financial test: obligations associated with UIC facilities under 40 CFR Part 144, petroleum underground storage tank facilities under 40 CFR Part 280, PCB storage facilities under 40 CFR Part 761, and hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265.

f. Local government financial test. An owner or operator that satisfies the requirements of this paragraph may demonstrate financial assurance up to the amount specified below:

(1) Financial component.

1. The owner or operator must satisfy one of the following requirements:

- If the owner or operator has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, the owner or operator must have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard & Poor's, on all such general obligation bonds; or
- The owner or operator must satisfy each of the following financial ratios based on the owner's or operator's most recent audited annual financial statement: a ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05, and a ratio of annual debt service to total expenditures less than or equal to 0.20.

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2. The owner or operator must prepare its financial statements in conformity with Generally Accepted Accounting Principles or Other Comprehensive Bases of Accounting and have its financial statements audited by an independent certified public accountant or the office of the auditor of the state of Iowa. The financial statement shall be in the form prescribed by the office of the auditor of the state of Iowa.

3. A local government is not eligible to assure its obligations in paragraph 115.31(6)"f" if it:

- Is currently in default on any outstanding general obligation bonds; or
- Has any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard & Poor's; or
- Operated at a deficit equal to 5 percent or more of total annual revenue in each of the past two fiscal years; or
- Receives an adverse opinion or disclaimer of opinion from the independent certified public accountant or office of the auditor of the state of Iowa auditing its financial statement as required under numbered paragraph 115.31(6)"f"(1)"2." A qualified opinion that is related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance of this mechanism.

4. The following terms used in this paragraph are defined as follows:

- "Cash plus marketable securities" means all the cash plus marketable securities held by the local government on the last day of a fiscal year, excluding cash and marketable securities designated to satisfy past obligations such as pensions.
- "Debt service" means the amount of principal and interest due on a loan in a given time period, typically the current year.
- "Deficit" means total annual revenues minus total annual expenditures.
- "Total expenditures" means all expenditures, excluding capital outlays and debt repayment.
- "Total revenues" means revenues from all taxes and fees excluding revenue from funds managed by local government on behalf of a specific third party and does not include the proceeds from borrowing or asset sales.

(2) Public notice component. The local government owner or operator must include disclosure of the closure and postclosure costs assured through the financial test in its next annual audit report prior to the initial receipt of waste at the facility or prior to cancellation of an alternative financial assurance mechanism, whichever is later. A reference to corrective action costs must be placed in the next annual audit report after the corrective action plan is approved by the department. For the first year the financial test is used to assure costs at a particular facility, the reference may instead be placed in the facility's official files until issuance of the next available annual audit report if timing does not permit the reference to be incorporated into the most recently issued annual audit report or budget. For closure and postclosure costs, conformance with Governmental Accounting Standards Board Statement 18 ensures compliance with this public notice component.

(3) Record-keeping and reporting requirements.

1. The local government owner or operator must submit to the department the following items:

- A letter signed by the local government's chief financial officer that lists all the current cost estimates covered by a financial test, as described in subparagraph 115.31(6)"f"(4); provides evidence and certifies that the local government meets the conditions of numbered paragraphs 115.31(6)"f"(1)"1," "2," and "3"; and certifies that the local government meets the conditions of subparagraphs 115.31(6)"f"(2) and (4); and
- The local government's annual financial report indicating compliance with the financial ratios required by numbered paragraph 115.31(6)"f"(1)"1," second bulleted paragraph, if applicable, and the requirements of numbered paragraph 115.31(6)"f"(1)"2" and the third and fourth bulleted paragraphs of numbered paragraph 115.31(6)"f"(1)"3"; and also indicating that the requirements of Governmental Accounting Standards Board Statement 18 have been met.

2. The items required in numbered paragraph 115.31(6)"f"(3)"1" must be submitted to the department and placed in the facility's official files prior to the receipt of waste or prior to the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure; or, in the case of corrective action, not later than 120 days after the corrective action plan is approved by the department.

3. After the initial submission of the required items and their placement in the facility's official files, the local government owner or operator must update the information and place the updated information in the facility's official files within 180 days following the close of the owner's or operator's fiscal year.

4. The owner or operator may cease the submission of the information required by paragraph 115.31(6)"f" only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

5. A local government must satisfy the requirements of the financial test at the close of each fiscal year. If the local government owner or operator no longer meets the requirements of the local government financial test, the local government must, within 180 days following the close of the owner's or operator's fiscal year, obtain alternative financial assurance that meets the requirements of this rule, place the required submissions for that assurance in the operating record, and notify the department that the owner or operator no longer meets the criteria of the financial test and that alternative financial assurance has been obtained.

6. The department, based on a reasonable belief that the local government owner or operator may no longer meet the requirements of the local government financial test, may require additional reports of financial conditions from the local government. If the department finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of the local government financial test, the local government must provide alternative financial assurance in accordance with this rule.

(4) Calculation of costs to be assured. The portion of the closure, postclosure, and corrective action costs which an owner or operator may assure under this paragraph is determined as follows:

1. If the local government owner or operator does not assure other environmental obligations through a financial test, the owner or operator may assure closure, postclosure, and corrective action costs that equal up to 43 percent of the local government's total annual revenue.

2. If the local government assures other environmental obligations through a financial test, including those associated with UIC facilities under 40 CFR Section 144.62, petroleum underground storage tank facilities under 40 CFR Part 280, PCB storage facilities under 40 CFR Part 761, and hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, the owner or operator must add

those costs to the closure, postclosure, and corrective action costs it seeks to assure under this paragraph. The total that may be assured must not exceed 43 percent of the local government's total annual revenue.

3. The owner or operator must obtain an alternative financial assurance instrument for those costs that exceed the limits set in numbered paragraphs 115.31(6)"f"(4)"1" and "2."

g. Corporate guarantee.

(1) An owner or operator may meet the requirements of this paragraph by obtaining a written guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, an owner or operator whose parent corporation is also the parent corporation of the owner or operator, or an owner or operator with a "substantial business relationship'' with the owner or operator. The guarantor must meet the requirements for owners or operators in paragraph 115.31(6)"g" and must comply with the terms of the guarantee. A certified copy of the guarantee must be placed in the facility's operating record along with copies of the letter from a certified public accountant and the accountant's opinions. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter from the certified public accountant must describe the value received in consideration of the guarantee. If the guarantor is an owner or operator with a ''substantial business relationship'' with the owner or operator, this letter must describe this ''substantial business relationship'' and the value received in consideration of the guarantee.

(2) The guarantee must be effective and all required submissions made to the department prior to the initial receipt of waste or before cancellation of an alternative financial mechanism, in the case of closure and postclosure; or, in the case of corrective action, no later than 120 days after the corrective action plan has been approved by the department.

(3) The terms of the guarantee must provide that:

1. If the owner or operator fails to perform closure, postclosure, or corrective action of a facility covered by the guarantee, or fails to obtain alternative financial assurance within 90 days of notice of intent to cancel pursuant to numbered paragraphs 115.31(6)"g"(3)"2" and "3," the guarantor will:

- Perform, or pay a third party to perform, closure, postclosure, or corrective action as required (performance guarantee); or
- Establish a fully funded trust fund as specified in paragraph 115.31(6)"a" in the name of the owner or operator (payment guarantee); or
- Obtain alternative financial assurance as required by numbered paragraph 115.31(6)"g"(3)"3."

2. The guarantee will remain in force for as long as the owner or operator must comply with the applicable financial assurance requirements of this rule unless the guarantor sends prior notice of cancellation by certified mail to the owner or operator and to the department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the department, as evidenced by the return receipts.

3. If notice of cancellation is given, the owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator and the department, provide to the department adequate proof of alternative financial assurance, notice from the guarantor of withdrawal of the cancellation, or proof of the establishment of a fully funded trust fund pursuant to paragraph 115.31(6)"a." If the owner or operator fails to comply with the provisions of this numbered paragraph within the 90-day period, the guarantor must provide that alternative financial assurance prior to cancellation of the corporate guarantee.

(4) If a corporate guarantor no longer meets the requirements of paragraph 115.31(6)"e," the owner or operator must, within 90 days, obtain alternative financial assurance and submit proof of alternative financial assurance to the department. If the owner or operator fails to provide alternative financial assurance within the 90-day period, the guarantor must provide that alternative financial assurance within the next 30 days.

(5) The owner or operator is no longer required to meet the requirements of paragraph 115.31(6)"g" upon the submission to the department of proof of the substitution of alternative financial assurance or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

h. Local government guarantee. An owner or operator may demonstrate financial assurance for closure, postclosure, or corrective action by obtaining a written guarantee provided by a local government or jointly provided by the members of an agency established pursuant to Iowa Code chapter 28E. The guarantor must meet the requirements of the local government financial test in paragraph 115.31(6)"f" and must comply with the terms of a written guarantee.

(1) Terms of the written guarantee. The guarantee must be effective before the initial receipt of waste or before the cancellation of alternative financial assurance, in the case of closure and postclosure; or no later than 120 days after the corrective action plan is approved by the department. The guarantee must provide that:

1. If the owner or operator fails to perform closure, postclosure, or corrective action of a facility covered by the guarantee or fails to obtain alternative financial assurance within 90 days of notice of intent to cancel pursuant to numbered paragraphs 115.31(6)"h"(1)"2" and "3," the guarantor will:

- Perform, or pay a third party to perform, closure, postclosure, or corrective action as required; or
- Establish a fully funded trust fund as specified in paragraph 115.31(6)"a" in the name of the owner or operator; or
- Obtain alternative financial assurance as required by numbered subparagraph 115.31(6)"h"(1)"3."

2. The guarantee will remain in force for as long as the owner or operator must comply with the applicable financial assurance requirements unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the department as evidenced by the return receipts.

3. If notice of cancellation is given, the owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator and the department, provide to the department adequate proof of alternative financial assurance, notice from the guarantor of withdrawal of the cancellation, or proof of the establishment of a fully funded trust fund pursuant to paragraph 115.31(6)"a." If the owner or operator fails to comply with the provisions of this numbered paragraph within the 90-day period, the guarantor must provide that alternative financial assurance prior to cancellation of the guarantee.

(2) Record-keeping and reporting requirements.

1. The owner or operator must submit to the department a certified copy of the guarantee along with the items required under subparagraph 115.31(6)"f"(3) and place a copy in the facility's official files before the initial receipt of waste

or before cancellation of alternative financial assurance, whichever is later, in the case of closure and postclosure; or no later than 120 days after the corrective action plan has been approved by the department.

2. The owner or operator shall no longer be required to submit the items specified in numbered paragraph 115.31(6)"h"(2)"1" when proof of alternative financial assurance has been submitted to the department or the owner or operator is no longer required to provide financial assurance pursuant to this rule.

3. If a local government guarantor no longer meets the requirements of paragraph 115.31(6)"f," the owner or operator must, within 90 days, submit to the department proof of alternative financial assurance. If the owner or operator fails to obtain alternative financial assurance within the 90-day period, the guarantor must provide that alternative financial assurance within the next 30 days.

i. Local government dedicated fund. The owner or operator of a publicly owned IMF landfill or local government serving as a guarantor may demonstrate financial assurance for closure, postclosure, or corrective action, whichever is applicable, by establishing a dedicated fund or account that conforms to the requirements of this subrule. A dedicated fund will be considered eligible if it complies with subparagraph 115.31(6)"i"(1) or (2), and all other provisions of this paragraph, and documentation of this compliance has been submitted to the department.

(1) The fund shall be dedicated by state constitutional provision or local government statute, charter, ordinance, or order to pay for closure, postclosure, or corrective action costs that arise from the operation of the IMF landfill and shall be funded for the full amount of coverage or funded for part of the required amount of coverage and used in combination with another mechanism(s) that provides the remaining coverage.

(2) The fund shall be dedicated by state constitutional provision or local government statute, charter, ordinance, or order as a reserve fund and shall be funded for no less than the full amount of coverage or funded for part of the required amount of coverage and used in combination with another mechanism(s) that provides the remaining coverage.

(3) Payments into the dedicated fund must be made annually by the owner or operator for ten years or over the permitted life of the IMF landfill, whichever is shorter, in the case of a dedicated fund for closure or postclosure; or over one-half of the estimated length of an approved corrective action plan in the case of a response to a known release. This is referred to as the pay-in period. The initial payment into the dedicated fund must be made before the initial receipt of waste in the case of closure and postclosure or no later than 120 days after the corrective action plan has been approved by the department.

(4) For a dedicated fund used to demonstrate financial assurance for closure and postclosure, the first payment into the dedicated fund must be at least equal to the amount specified in subrule 115.31(9), divided by the number of years in the pay-in period as defined in paragraph 115.31(6)"i." The amount of subsequent payments must be determined by the following formula:

$$\text{Payment} = \frac{CE - CB}{Y}$$

where CE is the total required financial assurance for the owner or operator, CB is the current balance of the fund, and Y is the number of years remaining in the pay-in period.

(5) For a dedicated fund used to demonstrate financial assurance for corrective action, the first payment into the dedicated fund must be at least one-half of the current cost estimate, divided by the number of years in the corrective action pay-in period as defined in paragraph 115.31(6)"i." The amount of subsequent payments must be determined by the following formula:

$$\text{Payment} = \frac{RB - CF}{Y}$$

where RB is the most recent estimate of the required dedicated fund balance, which is the total cost that will be incurred during the second half of the corrective action period, CF is the current amount in the dedicated fund, and Y is the number of years remaining in the pay-in period.

(6) The initial payment into the dedicated fund must be made before the initial receipt of waste or before the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure; or no later than 120 days after the corrective action remedy has been approved by the department.

(7) After the pay-in period has been completed, the dedicated fund shall be adjusted annually to correct any deficiency of the fund with respect to the adjusted cost estimate and may be adjusted annually should the balance in the fund exceed the adjusted cost estimate.

115.31(7) General requirements.

a. Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of this rule by establishing more than one financial mechanism per facility. The mechanisms must be a combination of those mechanisms outlined in this rule and must provide financial assurance for an amount at least equal to the current cost estimate for closure, postclosure, or corrective action, whichever is applicable. The financial test and a guarantee provided by a corporate parent, sibling or grandparent may not be combined if the financial statements of the two entities are consolidated.

b. Use of one mechanism for multiple facilities. An owner or operator may satisfy the requirements of this rule for multiple IMF landfills by the use of one mechanism if the owner or operator ensures that the mechanism provides financial assurance for an amount at least equal to the current cost estimates for closure, postclosure, or corrective action, whichever is applicable, for all IMF landfills covered.

c. Criteria. The language of the financial assurance mechanisms listed in this rule must ensure that the instruments satisfy the following criteria:

(1) The financial assurance mechanisms must ensure that the amount of funds assured is sufficient to cover the costs of closure, postclosure, or corrective action for known releases, whichever is applicable;

(2) The financial assurance mechanisms must ensure that funds will be available in a timely fashion when needed;

(3) The financial assurance mechanisms must be obtained by the owner or operator prior to the initial receipt of solid waste and no later than 120 days after the corrective action remedy has been approved by the department until the owner or operator is released from the financial assurance requirements; and

(4) The financial assurance mechanisms must be legally valid, binding, and enforceable under Iowa law.

d. No permit shall be issued by the department pursuant to Iowa Code Supplement section 455B.305 unless the applicant has demonstrated compliance with rule 115.31(455B).

115.31(8) Closure and postclosure accounts. The holder of a permit for an IMF landfill shall maintain a separate account for closure and postclosure as required by Iowa Code Supplement section 455B.306(9)"b." The account shall be specific to a particular facility.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

a. Definitions. For the purpose of this rule, the following definitions shall apply:

"Account" means a formal separate set of records.

"Current balance" means cash in an account established pursuant to this rule plus the current value of investments of moneys collected pursuant to subrule 115.31(8) and used to purchase one or more of the investments listed at Iowa Code section 12B.10(5).

"Current cost estimate" means the closure cost estimate prepared and submitted to the department pursuant to subrule 115.31(3) and the postclosure cost estimate prepared and submitted pursuant to subrule 115.31(4).

b. Moneys in the accounts shall not be assigned for the benefit of creditors except the state of Iowa.

c. Moneys in the accounts shall not be used to pay any final judgment against a permit holder arising out of the ownership or operation of the site during its active life or after closure.

d. Withdrawal of funds. Except as provided in paragraph 115.31(8)"e," moneys in the accounts may be withdrawn without department approval only for the purpose of funding closure, including partial closure, or postclosure activities that are in conformance with a closure/postclosure plan which has been submitted pursuant to subrule 115.13(10). Withdrawals for activities not in conformance with a closure/postclosure plan must receive prior written approval from the department. Permit holders using a trust fund established pursuant to paragraph 115.31(6)"a" to satisfy the requirements of this rule must comply with the requirements of subparagraph 115.31(6)"a"(6) prior to withdrawal.

e. Excess funds. If the balance of a closure or postclosure account exceeds the current cost estimate for closure or postclosure at any time, the permit holder may withdraw the excess funds so long as the withdrawal does not cause the balance to be reduced below the amount of the current cost estimate.

f. Initial proof of establishment of account. A permit holder shall submit a statement of account, signed by the permit holder, to the department by April 1, 2008, that indicates that accounts have been established pursuant to this rule. Permit holders for new landfills permitted after April 1, 2008, shall submit a statement of account, signed by the permit holder, to the department, prior to the landfill's initial receipt of waste.

g. An account established pursuant to paragraph 115.31(6)"a" for trust funds or paragraph 115.31(6)"i" for local government dedicated funds also satisfies the requirements of this rule, and the permit holder shall not be required to establish closure and postclosure accounts in addition to said financial assurance accounts.

Accounts established pursuant to paragraphs 115.31(6)"a" or 115.31(6)"i," which are intended to satisfy the requirements of this subrule, must comply with Iowa Code section 455B.306(8)"b."

h. Yearly deposits. Deposits into the closure and postclosure accounts shall be made at least yearly in the amounts specified in this subrule beginning with the close of the facility's first fiscal year that begins after the effective date of this rule. The deposits shall be made within 30 days of the close of each fiscal year. The minimum yearly deposit to the closure and postclosure accounts shall be determined using the following formula:

$$\frac{CE - CB}{RPC} \times TR = \text{yearly deposit to account}$$

Where:

"CE" means the current cost estimate of closure and postclosure costs.

"CB" means the current balance of the closure or postclosure accounts.

"RPC" means the remaining permitted capacity, in tons, of the landfill as of the start of the permit holder's fiscal year.

"TR" is the number of tons of solid waste disposed of at the facility in the prior year.

i. Closure and postclosure accounts may be commingled with other accounts so long as the amounts credited to each account balance are reported separately pursuant to paragraphs 115.31(3)"a" and 115.31(4)"a."

j. The department shall have full rights of access to all funds existing in a facility's closure or postclosure account, at the sole discretion of the department, if the permit holder fails to undertake closure or postclosure activities after being directed to do so by a final agency action of the department. These funds shall be used only for the purposes of funding closure and postclosure activities at the site.

115.31(9) Amount of required financial assurance. A financial assurance mechanism established pursuant to subrule 115.31(6) shall be in the amount of the third-party cost estimates required by subrules 115.31(3), 115.31(4), and 115.31(5) except that the amount of the financial assurance may be reduced by the sum of the cash balance in a trust fund or local government dedicated fund established to comply with subrule 115.31(8) plus the current value of investments held by said trust fund or local government dedicated fund if invested in one or more of the investments listed in Iowa Code section 12B.10(5).

ITEM 8. Amend 567—Chapter 118 by adopting the following **new** rule:

567—118.16(455B,455D) Appliance demanufacturing facility financial assurance requirements. The holder of a sanitary disposal project permit for an appliance demanufacturing facility shall maintain a surety bond in the sum of a minimum of $20,000 as financial assurance. The bond shall be specific to a particular facility for the purpose of properly disposing of any appliances, refrigerant, PCBs, mercury or other hazardous materials that may remain at a site due to the owner's or operator's failure to properly close the site within 30 days of permit termination, revocation, or expiration.

118.16(1) Exemptions. An appliance demanufacturing facility owned and operated in conjunction with a sanitary landfill already required to have financial assurance shall not be required to obtain additional financial assurance in compliance with this chapter.

118.16(2) No permit without financial assurance. Unless the facility is exempt from this rule under subrule 118.16(1), a permit shall not be issued to the owner or operator of an appliance demanufacturing facility until the owner or operator has provided evidence of obtaining a bond in the sum of a minimum of $20,000 on a form prescribed by the commissioner of insurance. For an appliance demanufacturing facility existing prior to [the effective date of this rule], initial proof of having obtained a bond shall be submitted by January 1, 2008, or at the time of permit renewal, whichever occurs first.

118.16(3) Bond requirements.

a. The bond shall be executed by a surety company authorized by the commissioner of insurance to do business in Iowa.

b. The surety shall name the state of Iowa as the obligee for the bond.

c. The bond shall be continuous in nature until canceled by the surety or until the department gives written notification to the owner, operator, and surety provider that the covered site has been properly closed. The surety shall provide at least 30 days' notice in writing to the appliance demanufacturer and the department in the event of any intent to cancel the bond.

d. The appliance demanufacturer shall provide the department with a statement from the surety with each permit application renewal, noting that the bond is paid and current for the permit period for which the appliance demanufacturer has applied for renewal.

118.16(4) Bond execution. If the owner or operator does not properly close the site within 30 days after closure, the department shall file a claim with the surety company to collect the amount of funds necessary to properly close the site by disposing of any appliances, refrigerant, PCBs, mercury or other hazardous materials that may remain at the site.

ITEM 9. Amend 567—Chapter 120 by adopting the following **new** rule:

567—120.13(455B,455D) Financial assurance requirements for multiuse and single-use landfarms. The holder of a sanitary disposal project permit for a multiuse or single-use landfarm shall maintain a surety bond in the sum of a minimum of $10,000 as financial assurance. The bond shall be specific to a particular permit holder for the purpose of conducting closure activities at the operating area(s) due to the permit holder's failure to properly close the site as required in accordance with rule 120.12(455B).

120.13(1) Adequacy of surety bond amount. The department may request an estimate of the costs to properly close the operating area(s). The cost estimate shall include the costs for conducting groundwater and soil sampling and properly cleaning all equipment and storage areas at the operating area(s) to ensure the adequacy of the surety bond amount.

120.13(2) No permit without financial assurance. A permit shall not be issued to the owner or operator of a multiuse or single-use landfarm until the permit holder has provided evidence of obtaining a bond in the sum of a minimum of $10,000 on a form prescribed by the commissioner of insurance. For multiuse and single-use landfarms existing prior to [the effective date of this rule], initial proof of having obtained a bond shall be submitted by January 1, 2008, or at the time of permit renewal, whichever occurs first.

120.13(3) Bond requirements.

a. The bond shall be executed by a surety company authorized by the commissioner of insurance to do business in Iowa.

b. The surety shall name the state of Iowa as the obligee for the bond.

c. The bond shall be continuous in nature until canceled by the surety or until the department gives written notification to the permit holder and surety provider that the covered site has been properly closed. The surety shall provide at least 30 days' notice in writing to the permit holder and the department in the event of any intent to cancel the bond.

d. The permit holder shall provide the department with a statement from the surety with each permit application renewal, noting that the bond is paid and current for the permit period for which the permit holder has applied for renewal.

120.13(4) Bond execution. If the permit holder does not properly close the site in accordance with rule 120.12(455B), the department shall file a claim with the surety company to collect the amount of funds necessary to properly close the operating area(s) by conducting groundwater and soil sampling, as applicable, and properly cleaning all equipment and storage areas that may remain at the operating area(s).

ITEM 10. Amend 567—Chapter 121 by adopting the following **new** rule:

567—121.8(455B) Financial assurance requirements for land application of wastes. The holder of a sanitary disposal project permit for land application of solid wastes that has received authorization to temporarily store waste at the application site(s) shall maintain a surety bond in the sum of a minimum of $10,000 as financial assurance. The bond shall be specific to a particular permit holder for the purpose of properly disposing of or having a third party land apply any stored solid wastes due to the permit holder's failure to properly land apply wastes in accordance with rule 121.7(455B) and the applicable permit provisions.

121.8(1) Adequacy of surety bond amount. To ensure the adequacy of the surety bond amount, the department may request an estimate of the transportation costs, which include the costs to load the material, and total fees to properly dispose of the maximum storage capacity at each temporary storage site or costs of having a third party land apply the total amount of material that could be stored at each land application site.

121.8(2) No permit without financial assurance. A permit shall not be issued to the owner or operator until the permit holder has provided evidence of obtaining a bond in the sum of a minimum of $10,000 on a form prescribed by the commissioner of insurance. For solid waste land application permits existing prior to [the effective date of this rule], initial proof of having obtained a bond shall be submitted by January 1, 2008, or at the time of permit renewal, whichever occurs first.

121.8(3) Bond requirements.

a. The bond shall be executed by a surety company authorized by the commissioner of insurance to do business in Iowa.

b. The surety shall name the state of Iowa as the obligee for the bond.

c. The bond shall be continuous in nature until canceled by the surety or until the department gives written notification to the permit holder and surety provider that the covered site has been properly closed. The surety shall provide at least 30 days' notice in writing to the permit holder and the department in the event of any intent to cancel the bond.

d. The permit holder shall provide the department with a statement from the surety with each permit application renewal, noting that the bond is paid and current for the permit period for which the permit holder has applied for renewal.

121.8(4) Bond execution. If the permit holder does not properly land apply the stored solid wastes in accordance with rule 121.7(455B) and the applicable permit provisions, the department shall file a claim with the surety company to collect the amount of funds necessary to properly dispose of or have a third party land apply any stored solid wastes that may remain at the application sites.

ITEM 11. Amend 567—Chapter 122 as follows:

Amend rule 567—122.8(455B,455D) as follows:

567—122.8(455B,455D) Operational requirements for CRT collection facilities. All CRT collection shall be done in a manner that complies with the following requirements. So long as this rule is complied with, the only rules within this chapter that shall apply to the permitted

activity are rules 122.1(455B,455D) to 122.3(455B,455D), 122.6(455B,455D), 122.7(455B,455D), 122.9(455B,455D), 122.10(455B,455D), and this rule.

122.8(1) *CRT storage at a permitted collection site shall be limited to 48 Gaylord boxes or equivalent containing no more than 2,000 CRTs. A permitted CRT collection site may store additional CRTs subject to the permit holder's obtaining and maintaining financial assurance for these additional CRTs in accordance with rule 122.28(455B,455D).*

~~**122.8(1)**~~ ***122.8(2)*** Collection activities for discarded CRTs shall occur in an area and through a process that minimizes the risk of hazardous conditions.

~~**122.8(2)**~~ ***122.8(3)*** Any hazardous condition shall immediately be contained and remedied with proper equipment and procedures.

~~**122.8(3)**~~ ***122.8(4)*** Discarded CRTs shall be collected and contained in a manner that is structurally adequate to prevent breakage and spillage under normal operating conditions, and that is compatible with the contents.

~~**122.8(4)**~~ ***122.8(5)*** CRT glass and CRTs that show evidence of breakage, leakage, or damage that could cause the release of lead or other hazardous constituents into the environment shall be collected in enclosed and separate containers from other discarded CRTs. Such containers shall be protected from precipitation.

~~**122.8(5)**~~ ***122.8(6)*** A CRT recycling facility may store discarded CRTs and materials derived from discarded CRTs outdoors if the following conditions are met:

a. The facility has a stormwater permit, if applicable.

b. The material is not harboring or attracting vectors.

c. Litter is contained within the storage area or unit.

d. The discarded CRTs and materials derived from discarded CRTs are not broken CRTs or CRT glass.

~~**122.8(6)**~~ ***122.8(7)*** Discarded CRTs and materials derived from discarded CRTs shall not be speculatively accumulated *at a permitted CRT recycling facility without the permitholder's obtaining and maintaining financial assurance for the additional CRTs in accordance with rule 122.29(455B)*. Speculative accumulation occurs when a facility cannot demonstrate that the amount of discarded CRTs ~~and materials derived from discarded CRTs~~ leaving the facility within a 12-month time period is greater than ~~75~~ *60* percent, by weight or volume, of the discarded CRTs and materials derived from discarded CRTs received by the facility within a 12-month time period.

~~**122.8(7)**~~ ***122.8(8)*** Containers or packages shall be labeled and transported in compliance with state and federal Department of Transportation (DOT) regulations.

Adopt the following **new** rules 567—122.28(455B,455D) and 567—122.29(455B):

567—122.28(455B,455D) Financial assurance requirements for cathode ray tube collection facilities. Permitted CRT collection facilities must obtain and submit a financial assurance instrument to the department for permitted CRT storage in accordance with these rules. The financial assurance instrument shall provide monetary funds for proper removal of any discarded CRTs, PCBs, mercury or other hazardous materials that may remain at a site due to the owner's or operator's failure to properly close the site within 30 days of permit termination, revocation, or expiration.

122.28(1) No permit without financial assurance. A permit shall not be issued to the owner or operator of a CRT collection facility until a financial assurance instrument has been submitted to and approved by the department if applicable.

122.28(2) Financial assurance amount required. CRT collection facilities shall have financial assurance coverage equal to one dollar per pound stored above the permitted storage capacity of 48 Gaylord boxes containing no more than 2,000 CRTs, in accordance with subrule 122.8(1).

122.28(3) Acceptable financial assurance instruments. Financial assurance may be provided by cash, surety bond, letter of credit, secured trust fund or local government dedicated fund as follows:

a. Cash payments shall be provided by a certified check, made payable to the Department of Natural Resources.

b. A surety bond shall be executed by a surety company authorized by the commissioner of insurance to do business in Iowa. The surety bond shall comply with the following:

(1) The surety shall name the state of Iowa as the obligee for the bond.

(2) The bond shall be continuous in nature until canceled by the surety or until the department gives written notification to the owner, operator, and surety provider that the covered site has been properly closed. The surety shall provide at least 30 days' notice in writing to the CRT collection facility and the department in the event of any intent to cancel the bond.

(3) The CRT collection facility shall provide the department with a statement from the surety with each permit application renewal, noting that the bond is paid and current for the permit period for which the CRT collection facility has applied for renewal.

(4) If the owner or operator does not properly close the site within 30 days after closure, the department shall file a claim with the surety company to collect the amount of funds necessary to properly close the site by removal of any discarded CRTs, PCBs, mercury or other hazardous materials that may remain at the site.

c. A letter of credit shall be issued by an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency. The letter of credit shall comply with the following:

(1) A cash account shall be established in conjunction with the letter of credit.

(2) The letter of credit must be irrevocable and issued for the permit issuance period in an amount at least equal to the amount specified in subrule 122.28(2).

(3) The provision of funds by the issuer of the letter of credit shall be considered an issuance of a loan to the owner or operator, and the terms of that loan shall be governed by the letter of credit or subsequent agreement between those parties. The state shall not be considered a party to this credit transaction.

d. A secured trust fund shall name the department of natural resources as the entity authorized to draw funds from the trust, subject to proper notification to the trust officer of failure by the permittee to comply with proper removal of any discarded CRTs, PCBs, mercury or other hazardous materials that may remain at the site by the financial assurance provided by the trust.

e. A local government fund shall be dedicated by state constitutional provision or local government statute, charter, ordinance, or order to pay for closure arising from the operation of the CRT recycling facility and shall be funded for the full amount of coverage.

122.28(4) Financial assurance cancellation and permit suspension.

a. Within 30 days of receipt of a written notice of cancellation of financial assurance by the surety, the owner or operator must provide the department an alternative financial

assurance instrument. If a means of continued financial assurance is not provided within the 30-day period, the department shall suspend the permit.

b. The owner or operator shall perform proper closure within 30 days of the permit suspension. For the purpose of this rule, proper closure means removal of all discarded CRTs, PCBs, mercury or other hazardous materials that remain at the site through acceptable disposal or processing options.

c. If the owner or operator does not properly close the site within the 30-day period allowed, the department shall file a claim with the surety company, the issuing institution of the letter of credit or the trust to collect the amount of funds necessary to properly close the site.

d. Any financial assurance instrument provided to the department in compliance with this rule must be payable to the department and must remain in continuous effect until the department gives written notification to the owner, operator, surety provider or trust that the covered site has been properly closed. An owner or operator who elects to terminate a permitted activity, or whose renewal application has been denied, or whose permit has been suspended or revoked for cause, must close within 30 days of notification by removing through acceptable disposal or processing options all discarded CRTs, PCBs, mercury or other hazardous materials that remain at the site.

e. The department may request payment from any surety, the issuing institution of a letter of credit or the trust to provide for the purpose of completing closure when closure is not completed in accordance with paragraph 122.28(4)"d."

567—122.29(455B) Financial assurance requirements for cathode ray tube recycling facilities. Permitted CRT recycling facilities must obtain and submit a financial assurance instrument to the department for permitted CRT storage determined to be speculatively accumulated in accordance with these rules. The financial assurance instrument shall provide monetary funds for proper removal of any discarded CRTs, PCBs, mercury or other hazardous materials that may remain at a site due to the owner's or operator's failure to properly close the site in accordance with rule 122.27(455B,455D) and the closure plan submitted pursuant to paragraph 122.11(1)"n."

122.29(1) No permit without financial assurance. A permit shall not be issued to the owner or operator of a CRT recycling facility until a financial assurance instrument has been submitted to and approved by the department as applicable.

122.29(2) Financial assurance amount required. CRT recycling facilities shall have financial assurance coverage equal to one dollar per pound of CRTs determined to be speculatively accumulated in accordance with subrule 122.8(7).

122.29(3) Acceptable financial assurance instruments. Financial assurance may be provided by cash, surety bond, letter of credit, secured trust fund or local government dedicated fund as follows:

a. Cash payments shall be provided by a certified check, made payable to the Department of Natural Resources.

b. A surety bond shall be executed by a surety company authorized by the commissioner of insurance to do business in Iowa. The surety bond shall comply with the following:

(1) The surety shall name the state of Iowa as the obligee for the bond.

(2) The bond shall be continuous in nature until canceled by the surety or until the department gives written notification to the owner, operator, and surety provider that the covered site has been properly closed. The surety shall provide at least 30 days' notice in writing to the CRT recycling facility and the department in the event of any intent to cancel the bond.

(3) The CRT collection facility shall provide the department with a statement from the surety with each permit application renewal, noting that the bond is paid and current for the permit period for which the CRT recycling facility has applied for renewal.

(4) If the owner or operator does not properly close the site within 30 days after closure, the department shall file a claim with the surety company to collect the amount of funds necessary to properly close the site by removal of any discarded CRTs, PCBs, mercury or other hazardous materials that may remain at the site.

c. A letter of credit shall be issued by an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency. The letter of credit shall comply with the following:

(1) A cash account shall be established in conjunction with the letter of credit.

(2) The letter of credit must be irrevocable and issued for the permit issuance period in an amount at least equal to the amount specified in subrule 122.29(2).

(3) The provision of funds by the issuer of the letter of credit shall be considered an issuance of a loan to the owner or operator, and the terms of that loan shall be governed by the letter of credit or subsequent agreement between those parties. The state shall not be considered a party to this credit transaction.

d. A secured trust fund shall name the department of natural resources as the entity authorized to draw funds from the trust, subject to proper notification to the trust officer of failure by the permittee to comply with proper removal of any discarded CRTs, PCBs, mercury or other hazardous materials that may remain at the site by the financial assurance provided by the trust.

e. A local government fund shall be dedicated by state constitutional provision or local government statute, charter, ordinance, or order to pay for closure arising from the operation of the CRT recycling facility and shall be funded for the full amount of coverage.

122.29(4) Financial assurance cancellation and permit suspension.

a. Within 30 days of receipt of a written notice of cancellation of financial assurance by the surety, the owner or operator must provide the department an alternative financial assurance instrument. If a means of continued financial assurance is not provided within the 30-day period, the department shall suspend the permit.

b. The owner or operator shall perform proper closure in accordance with rule 122.27(455B,455D) and the closure plan that was submitted in accordance with paragraph 122.11(1)"n" within 30 days of the permit suspension.

c. If the owner or operator does not properly close the site within the 30-day period allowed, the department shall file a claim with the surety company, the issuing institution of the letter of credit or the trust to collect the amount of funds necessary to properly close the site.

d. Any financial assurance instrument provided to the department in compliance with this rule must be payable to the department and must remain in continuous effect until the director of the department gives written notification to the owner, operator, surety provider or trust that the covered site has been properly closed. An owner or operator who elects to terminate a permitted activity, or whose renewal application

has been denied, or whose permit has been suspended or revoked for cause, must close within 30 days of notification in accordance with rule 122.27(455B,455D) and the closure plan submitted in accordance with paragraph 122.11(1)"n."

e. The department may request payment from any surety, the issuing institution of a letter of credit or the trust to provide for the purpose of completing closure when closure is not completed in accordance with rule 122.27(455B,455D) and the closure plan that was submitted in accordance with paragraph 122.11(1)"n."

ITEM 12. Amend 567—Chapter 123 by adopting the following **new** rule:

567—123.12(455B,455D,455F) Financial assurance requirements for regional collection centers and mobile unit collection and consolidation centers. The holder of a sanitary disposal project permit for an RCC or MUCCC shall maintain a closure account as financial assurance. The account shall be specific to a particular facility.

123.12(1) Exemptions. RCC and MUCCC facilities owned and operated in conjunction with a sanitary landfill already required to have financial assurance shall not be required to obtain additional financial assurance in compliance with this chapter.

123.12(2) Definitions. For the purpose of this rule, the following definitions shall apply:

"Account" means a formal set of separate records.

"Current cost estimate" means the cost estimate for subrule 123.12(3), prepared and submitted to the department at the time of application for a new RCC or MUCCC facility permit, at the time of request for a permit amendment that increases closure costs and with each permit renewal thereafter. For RCC and MUCCC facilities existing prior to [the effective date of this rule], an initial cost estimate shall be submitted by January 1, 2008, or at the time of permit renewal, whichever occurs first.

123.12(3) Current cost estimate for RCC and MUCCC facilities. The current cost estimate submitted to the department shall be an average of the disposal costs charged by the hazardous waste contractor to the RCC or MUCCC as reported on the semiannual reports submitted in accordance with rule 123.11(455B,455D,455F) for the most recent three-year period. For new facilities or existing facilities that do not have sufficient data to determine an average disposal cost, the first cost estimate shall be equal to $15,000. The estimate shall be adjusted once sufficient data is available for a three-year period.

123.12(4) Nonassignment of funds. Moneys in the account shall not be assigned for the benefit of creditors except the state of Iowa.

123.12(5) Final judgments. Moneys in an account shall not be used to pay any final judgment against a permit holder that arises out of the ownership or operation of the site during its active life or closure.

123.12(6) Withdrawal of funds. Moneys in the account may be withdrawn without department approval only for the purpose of funding closure activities, including partial closure, that are in conformance with the closure requirements for RCC and MUCCC facilities. Withdrawals for activities not in conformance with a closure requirement must receive prior written approval from the department.

123.12(7) Excess funds. If the balance of a closure account exceeds the current cost estimate for closure at any time, then the permit holder may withdraw the excess funds so long as the withdrawal does not cause the balance to be reduced below the amount of the current cost estimate.

123.12(8) Initial proof of establishment of account and funds. Proof of the establishment of the account and its compliance with this rule shall be submitted to the department within 30 days of the close of the permit holder's first fiscal year that begins after [the effective date of this rule] or at the time of application for a permit for a new RCC or MUCCC facility.

123.12(9) Deposits. Deposits into the closure account shall be made on an annual basis for a period of five years, in the amount specified in this rule, beginning with the permit holder's first fiscal year that begins after [the effective date of this rule]. The deposits shall be made within 30 days of the close of the permit holder's fiscal year. The minimum annual deposit to the closure account shall be determined using the following formula:

$$\frac{CE - CB}{Y} = \text{annual deposit to closure account}$$

Where:

"CE" means the current cost estimate as defined in subrule 123.12(2), as applicable.

"CB" means the current balance of the closure account, as applicable.

"Y" means the number of years remaining in the five-year pay-in period.

After the pay-in period has been completed, the account shall be adjusted annually to correct any deficiency of the account with respect to the adjusted cost estimates and may be adjusted annually should the balance in the account exceed the adjusted cost estimate.

123.12(10) Investment of funds. Funds held in the account established by this rule may be invested only in instruments listed at Iowa Code section 12B.10(5).

123.12(11) Access to funds by the department. The department shall have full rights of access to all funds existing in a facility's closure account, at the sole discretion of the department, if the permit holder fails to undertake closure activities after being directed to do so by a final agency action of the department. These funds shall be used only for the purpose of funding closure activities at the site.

ARC 5645B

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"*b*."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services proposes to amend Chapter 51, "Eligibility," and Chapter 52, "Payment," Iowa Administrative Code.

These amendments implement the annual adjustments to eligibility and payment levels in the State Supplementary Assistance Program that are necessary to meet the federal "pass-along" requirements specified in Title XVI of the Social Security Act. The State of Iowa uses the payment levels method of compliance, which requires the State to increase the payment amounts and income limits for State Supplementary Assistance categories effective January 1 of each year as nec-

essary to meet the minimum levels required by the federal government. The minimum levels are indexed by the cost-of-living increase in federal Social Security and Supplemental Security Income (SSI) benefits, which is 3.3 percent for calendar year 2007.

Changes necessary to meet federal pass-along requirements for 2007 are as follows:

- Increasing the income limit and payment standard for dependent relatives from $306 per month to $317 per month.
- Increasing the dependent relative income limits by $31 per month for an eligible individual (from $909 to $940) and by $41 per month for an eligible couple (from $1210 to $1251).
- Increasing the family life home income limit by $20 per month (from $765 to $785).
- Increasing the maximum family life home payment by $24 per month (from $673 to $697).
- Increasing the maximum residential care per diem rate by $0.65 (from $25.85 to $26.50).

State legislation also requires the Department to increase the personal needs allowance for residents of residential care facilities at the same percentage and at the same time as federal Social Security and SSI benefits are increased. However, the amount added to the personal needs allowance for Medicaid copayment is decreased for 2007 due to the transfer of drug coverage to Medicare. Therefore, these amendments decrease the residential care facility and family life home personal needs allowances by $4 per month (from $92 to $88). A deduction from income can be allowed for people who have unmet medical needs, including Medicare Part D copayments.

These amendments do not provide for waivers in specified situations because they benefit the people affected by increasing payment levels.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 5646B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

Any interested person may make written comments on the proposed amendments on or before January 24, 2007. Comments should be directed to Mary Ellen Imlau, Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515) 281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments are intended to implement Iowa Code chapter 249 and 2006 Iowa Acts, chapter 1184, section 13.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

ARC 5649B

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"*b*."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 77, "Conditions of Participation for Providers of Medical and Remedial Care," Chapter 78, "Amount, Duration, and Scope of Medical and Remedial Services," and Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

These amendments add home- and community-based habilitation services as a new category of services covered under Medicaid. Beginning in January 2007, Section 6086 of the Deficit Reduction Act of 2005, Public Law 109-171, allows states to cover home- and community-based long-term care services for Medicaid members with disabilities or chronic conditions. Using this option, the Department has worked with federal officials to design a new program to meet the nonrehabilitative service needs of Medicaid members who currently receive rehabilitation services for adults with chronic mental illness (also known as the "adult rehabilitation option" or "ARO").

Coverage for ARO services is being discontinued under rules recently adopted for remedial services. (See **ARC 5514B**, published in the Iowa Administrative Bulletin on November 8, 2006.) The Department determined that changes to coverage of remedial services were necessary in order to ensure that the state remains in compliance with federal Medicaid regulations on rehabilitative services. Many services formerly covered under the ARO program are now covered as remedial services. However, remedial services do not include supervision or habilitation components.

These amendments define the amount, duration, and scope of covered home- and community-based habilitation services and set the provider requirements and reimbursement methodology. Service components include home-based habilitation, day habilitation, prevocational habilitation, and supported employment (activities to find and maintain employment). Case management is a covered service for members who are not otherwise eligible for Medicaid case management services.

To be eligible for habilitation services, members shall have a history of psychiatric illness, risk factors indicating a need for continuing supports, and a need for one or more of the covered services as identified in a comprehensive service plan developed by an interdisciplinary team. Federal legislation limits the income for members receiving these services to 150 percent of the federal poverty level.

Home-based habilitation services may be provided wherever a member lives, including a residential care facility of 16 or fewer persons. A daily rate may be developed for home-based habilitation when the member needs services 14 or more hours per day.

Utilization is controlled by limiting the number of slots available in the program and by limiting units of service and rates. Reimbursement for day habilitation, prevocational ha-

bilitation, and supported employment activities to obtain a job is based on a fee schedule. Reimbursement for home-based habilitation and supported employment supports to maintain employment is based on a retrospective cost-related rate calculated for each provider. The nonfederal share of the cost of habilitation services will be the responsibility of the member's county of legal settlement, as is the case with ARO services.

These amendments do not provide for waivers in specified situations. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 5650B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

Any interested person may make written comments on the proposed amendments on or before January 24, 2007. Comments should be directed to Mary Ellen Imlau, Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515) 281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

The Department will hold a public hearing for the purpose of receiving comments on these amendments on January 24, 2007, from 1:30 to 3 p.m. in Rooms 130 and 131, Iowa Medicaid Enterprise Building, 100 Army Post Road, Des Moines. Comments may be offered at the hearing either orally or in writing. Anyone who intends to attend the hearing and has special requirements, such as hearing or vision impairments, should contact the Office of Policy Analysis at (515) 281-8440 and advise of special needs.

These amendments are intended to implement Iowa Code section 249A.4.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

ARC 5631B

MEDICAL EXAMINERS BOARD[653]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"*b*."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 147.76 and 272C.3, the Board of Medical Examiners hereby gives Notice of Intended Action to amend Chapter 8, "Fees," Chapter 9, "Permanent Physician Licensure," Chapter 10, "Resident, Special and Temporary Physician Licensure," Chapter 11, "Continuing Education and Mandatory Training for Identifying and Reporting Abuse," and Chapter 17, "Licensure of Acupuncturists," Iowa Administrative Code.

The proposed amendments impose a service charge for making a service available on line, eliminate the current convenience fee, and update the Board's Web site address.

The Board approved the proposed amendments to Chapters 8, 9, 10, 11 and 17 during its regularly held meeting on December 7, 2006.

Any interested person may present written comments on these proposed amendments not later than 4:30 p.m. on January 23, 2007. Such written materials should be sent to Ann E. Mowery, Executive Director, Board of Medical Examiners, 400 S.W. Eighth Street, Suite C, Des Moines, Iowa 50309-4686, or E-mail at ann.mowery@iowa.gov.

There will be a public hearing on January 23, 2007, at 3:15 p.m. in the Board office, at which time persons may present their views either orally or in writing. The Board of Medical Examiners' office is located at 400 S.W. Eighth Street, Suite C, Des Moines, Iowa.

These amendments are intended to implement Iowa Code section 147.80.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule 653—8.1(147,148,272C) as follows:

653—8.1(147,148,272C) Definitions.

"Board" means the Iowa board of medical examiners.

"Service charge" means the amount charged for making a service available on line and is in addition to the actual fee for a service itself. For example, one who renews a license on line will pay the license renewal fee and a service charge.

ITEM 2. Amend subrule **8.4(1)**, paragraph **"c,"** as follows:

c. Renewal of an active license to practice, $500 if renewal is made via paper application or $400 if renewal is made via on-line application, per biennial period or a prorated portion thereof if the current license was issued for a period of less than 24 months. ~~A convenience fee will be charged for on-line renewal.~~

ITEM 3. Amend rule **653—8.9(147,148,272C)**, numbered paragraph **"1,"** as follows:

1. Iowa Code and Iowa Administrative Code access, no fee, available at ~~www.docboard.org/ia~~ *www.medicalboard.iowa.gov*.

ITEM 4. Amend rule **653—9.1(147,148,150,150A)** by adding the following **new** definition in alphabetical order:

"Service charge" means the amount charged for making a service available on line and is in addition to the actual fee for a service itself. For example, one who renews a license on line will pay the license renewal fee and a service charge.

ITEM 5. Amend subrule **9.11(3)**, paragraph **"a,"** as follows:

a. The renewal fee is $500 if the renewal is made via paper application or $400 if the renewal is made via on-line application, per biennial period or a prorated portion thereof if the current license was issued for a period of less than 24 months. ~~A convenience fee will be charged for on-line renewal.~~

ITEM 6. Amend rule **653—10.1(147,148,150,150A)** by adding the following **new** definition in alphabetical order:

"Service charge" means the amount charged for making a service available on line and is in addition to the actual fee for

a service itself. For example, one who renews a license on line will pay the license renewal fee and a service charge.

ITEM 7. Amend rule **653—11.1(272C)** by adding the following **new** definition in alphabetical order:

"Service charge" means the amount charged for making a service available on line and is in addition to the actual fee for a service itself. For example, one who renews a license on line will pay the license renewal fee and a service charge.

ITEM 8. Amend rule **653—17.3(148E)** by adding the following **new** definition in alphabetical order:

"Service charge" means the amount charged for making a service available on line and is in addition to the actual fee for a service itself. For example, one who renews a license on line will pay the license renewal fee and a service charge.

ARC 5628B

MEDICAL EXAMINERS BOARD[653]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)*"b."*

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 147.76 and 272C.3, the Board of Medical Examiners hereby gives Notice of Intended Action to amend Chapter 22, "Mandatory Reporting," Iowa Administrative Code.

The proposed amendments update the definition of "reportable conduct" to mean wrongful acts or omissions that are grounds for license revocation or suspension under these rules or that otherwise constitute negligence, careless acts or omissions demonstrating an inability to practice medicine competently, safely, or within the bounds of medical ethics, in keeping with Iowa Code sections 272C.3(2) and 272C.4(6) and 653—Chapter 23. The amendments also stipulate that a licensee shall not be civilly liable for filing a report with the Board so long as such report is not made with malice. In addition, the amendments change the rule that establishes a failure to report child abuse or dependent adult abuse as grounds for discipline, so that knowingly and willfully failing to report child abuse or dependent adult abuse may be grounds for discipline.

The Board approved the proposed amendments during its regularly held meeting on December 7, 2006.

Any interested person may present written comments on the proposed amendments not later than 4:30 p.m. on January 23, 2007. Such written materials should be sent to Ann E. Mowery, Executive Director, Board of Medical Examiners, 400 S.W. 8th Street, Suite C, Des Moines, Iowa 50309-4686; or sent by E-mail to ann.mowery@iowa.gov.

A public hearing will be held in the Board office on January 23, 2007, at 3 p.m., at which time persons may present their views either orally or in writing. The Board of Medical Examiners' office is located at 400 S.W. 8th Street, Suite C, Des Moines, Iowa.

These amendments are intended to implement Iowa Code chapter 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule 653—22.2(272C) as follows:

653—22.2(272C) Mandatory reporting—wrongful acts or omissions.

22.2(1) Definitions. For the purposes of this rule, the following definitions apply:

"Knowledge" means any information or evidence of reportable conduct acquired by personal observation, from a reliable or authoritative source, or under circumstances causing the licensee to believe that wrongful acts or omissions may have occurred.

"Reportable conduct" means ~~a~~ wrongful ~~act~~ *acts* or ~~omission~~ *omissions* that ~~may constitute a basis for disciplinary action under this chapter or any state law or administrative rule that gives the board jurisdiction over the conduct of a licensee~~ *are grounds for license revocation or suspension under these rules or that otherwise constitute negligence, careless acts or omissions that demonstrate a licensee's inability to practice medicine competently, safely, or within the bounds of medical ethics, pursuant to Iowa Code sections 272C.3(2) and 272C.4(6) and 653—Chapter 23*.

22.2(2) Reporting requirement. A report shall be filed with the board when a licensee has knowledge as defined in this rule that another person licensed by the board may have engaged in reportable conduct.

a. The report shall be filed with the board no later than 30 days from the date the licensee acquires knowledge of the reportable conduct.

b. The report shall contain the name and address of the licensee who may have engaged in the reportable conduct~~,~~*;* the date, time, place and circumstances in which the conduct occurred~~,~~*;* and a statement explaining how knowledge of the reportable conduct was acquired.

c. The final determination of whether or not wrongful acts or omissions have occurred is the responsibility of the board.

d. A physician is not required to report confidential communication obtained from a physician in the course and as a result of a physician-patient relationship or when a state or federal statute prohibits such disclosure.

e. Failure to report a wrongful act or omission in accordance with this rule within the required 30-day period shall constitute a basis for disciplinary action against the licensee who failed to report.

f. A licensee ~~who makes a good-faith report pursuant to this chapter and Iowa Code section 272C shall have immunity from any liability, civil or criminal, which might otherwise be incurred or imposed~~ *shall not be civilly liable as a result of filing a report with the board so long as such report is not made with malice.*

ITEM 2. Amend rule 653—22.4(272C) as follows:

653—22.4(272C) Mandatory reporting—child abuse and dependent adult abuse. Each licensee shall report child abuse and dependent adult abuse as required by state and federal law. ~~Failure~~ *Knowingly and willfully failing* to report child abuse and dependent adult abuse as required by state and federal law in accordance with this rule ~~shall constitute a basis~~ *may be grounds* for disciplinary action against the licensee.

ARC 5629B

MEDICAL EXAMINERS BOARD[653]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"*b.*"

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 147.76 and 272C.3, the Board of Medical Examiners hereby gives Notice of Intended Action to amend Chapter 23, "Grounds for Discipline," Iowa Administrative Code.

The proposed amendment establishes that the Board may take disciplinary action against a physician who has entered into a voluntary agreement in another jurisdiction. The amendment identifies the criteria the Board will use to determine whether a physician has entered into a voluntary agreement. In addition, the amendment states that a certified copy of the voluntary agreement shall be considered prima facie evidence.

The Board approved the proposed amendment to Chapter 23 during its regularly held meeting on December 7, 2006.

Any interested person may present written comments on this proposed amendment not later than 4:30 p.m. on January 23, 2007. Such written materials should be sent to Ann E. Mowery, Executive Director, Board of Medical Examiners, 400 S.W. Eighth Street, Suite C, Des Moines, Iowa 50309-4686; or sent by E-mail to ann.mowery@iowa.gov.

There will be a public hearing on January 23, 2007, at 3 p.m. in the Board office, at which time persons may present their views either orally or in writing. The Board of Medical Examiners' office is located at 400 S.W. Eighth Street, Suite C, Des Moines, Iowa.

This amendment is intended to implement Iowa Code section 272C.2.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Amend rule 653—23.1(272C) by adding the following **new** subrule:

23.1(37) Voluntary agreements. The board may take disciplinary action against a physician if that physician has entered into a voluntary agreement to restrict the practice of medicine in another state, district, territory, or country.

a. The board will use the following criteria to determine if a physician has entered into a voluntary agreement within the meaning of Iowa Code section 148.12 and this rule.

(1) The voluntary agreement was signed during or at the conclusion of a disciplinary investigation, or to prevent a matter from proceeding to a disciplinary investigation.

(2) The agreement includes any or all of the following:

1. Education or testing that is beyond the jurisdiction's usual requirement for a license or license renewal.

2. An assignment beyond what is required for license renewal or regular practice, e.g., adoption of a protocol, use of a chaperone, completion of specified continuing education, or completion of a writing assignment.

3. A prohibition or limitation on practice privileges, e.g., a restriction on prescribing or administering controlled substances.

4. Compliance with an educational plan.

5. A requirement that surveys or reviews of patients or patient records be conducted.

6. A practice monitoring requirement.

7. A special notification requirement for a change of address.

8. Payment that is not routinely required of all physicians in that jurisdiction, such as a civil penalty, fine or reimbursement of any expenses.

9. Any other activity or requirements imposed by the board that are beyond the usual licensure requirements for obtaining, renewing, or reinstating a license in that jurisdiction.

b. A certified copy of the voluntary agreement shall be considered prima facie evidence.

ARC 5627B

PROFESSIONAL LICENSURE DIVISION[645]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"*b.*"

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Examiners for Massage Therapy hereby gives Notice of Intended Action to rescind Chapter 133, "Continuing Education for Massage Therapists," Iowa Administrative Code, and adopt new Chapter 133 with the same title.

This proposed amendment rescinds Chapter 133 for continuing education and adopts a new Chapter 133 in lieu thereof. The Board has received public comments regarding the need to make the continuing education categories clearer, and the changes to Chapter 133 are in response to those comments.

Any interested person may make written comments on the proposed amendment no later than January 24, 2007, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail pwilson@idph.state.ia.us.

A public hearing will be held on January 24, 2007, from 9 to 9:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment.

This amendment is intended to implement Iowa Code chapters 21, 147, 152C and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

Rescind 645—Chapter 133 and adopt the following **new** chapter in lieu thereof:

CHAPTER 133
CONTINUING EDUCATION FOR
MASSAGE THERAPISTS

645—133.1(152C) Definitions. For the purpose of these rules, the following definitions shall apply:

"Active license" means a license that is current and has not expired.

"Approved program/activity" means a continuing education program/activity meeting the standards set forth in these rules.

"Audit" means the selection of licensees for verification of satisfactory completion of continuing education requirements during a specified time period or the selection of providers for verification of adherence to continuing education provider requirements during a specified time period.

"Board" means the board of examiners for massage therapy.

"Continuing education" means planned, organized learning acts acquired during initial licensure designed to maintain, improve, or expand a licensee's knowledge and skills in order for the licensee to develop new knowledge and skills relevant to the enhancement of practice, education, or theory development to improve the safety and welfare of the public.

"Hands-on training" means learning techniques that manipulate the soft tissue of the body.

"Hour of continuing education" means at least 50 minutes spent by a licensee in actual attendance at and completion of an approved continuing education activity.

"Inactive license" means a license that has expired because it was not renewed by the end of the grace period. The category of "inactive license" may include licenses formerly known as lapsed, inactive, delinquent, closed, or retired.

"Independent study" means a subject/program/activity that a person pursues autonomously that meets standards for approval criteria in the rules and includes a posttest.

"License" means license to practice.

"Licensee" means any person licensed to practice as a massage therapist in the state of Iowa.

"Presenter" means person(s)/instructor(s) providing continuing education training.

645—133.2(152C) Continuing education requirements. Each biennium, each person who is licensed to practice as a massage therapist in this state shall be required to complete a minimum of 24 hours of continuing education. A biennium is a two-year period beginning with the date the license was granted.

133.2(1) The biennial continuing education compliance period shall run concurrently with each two-year renewal period. The renewal period begins on the date the initial license is granted and ends two years later on the day before the anniversary date of that initial license.

133.2(2) Requirements for new licensees. Those persons licensed for the first time shall not be required to complete continuing education as a prerequisite for the first renewal of their licenses. Continuing education hours acquired anytime from the initial licensing until the second license renewal period may be used.

133.2(3) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity meeting the requirements of this chapter. These hours must be in accordance with these rules.

133.2(4) No hours of continuing education shall be carried over into the next renewal period. A licensee whose license was reactivated during the current renewal compliance period may use continuing education earned during the compliance period for the first renewal following reactivation.

133.2(5) The cost of continuing education is the responsibility of each licensee.

645—133.3(152C,272C) Continuing education criteria.

133.3(1) General criteria. A continuing education activity which meets all of the following criteria is appropriate for continuing education credit if the continuing education activity:

a. Constitutes an organized program of learning which contributes directly to the professional competency of the licensee;

b. Pertains to subject matters which integrally relate to the practice of the profession;

c. Is conducted by individuals who have specialized education, training and experience by reason of which said individuals should be considered qualified concerning the subject matter of the program. At the time of audit, the board may request the qualifications of presenters;

d. Fulfills stated program goals, objectives, or both; and

e. Provides proof of attendance to licensees in attendance, including:

(1) Date, location, course title, presenter(s);

(2) Number of program contact hours; and

(3) Certificate of completion or evidence of successful completion of the course from the course sponsor.

133.3(2) Specific criteria. A licensee shall obtain a minimum of 24 hours of continuing education credit every two years. Twelve hours must be obtained in category A and 12 hours may be in either category A or B. A licensee may choose to obtain all 24 hours in category A.

a. Category A specific continuing education requirements.

(1) A minimum of 12 hours of the 24 hours shall be:

1. Direct, hands-on training attended personally by the licensee;

2. Related to the actual practice of massage/bodywork therapy;

3. Sponsored by a local, state, national or international professional organization or chapter of massage/bodywork therapy, or a professional, hands-on school of massage/bodywork therapy that meets or exceeds the standards set forth in 645—Chapter 132;

4. Presented by a massage/bodywork therapist with a minimum of five years of clinical experience in massage/bodywork therapy. The individuals presenting the continuing education activity must have specialized education, training and experience by reason of which said individuals are considered qualified concerning the subject matter of the program.

(2) Excluded content areas for continuing education in category A are any massage/bodywork techniques that do not directly make physical contact with the body and that are outside the scope of practice in accordance with the definition of massage therapy set forth in rule 645—131.1(152C) including but are not limited to: Reiki, Barbara Brennan Healing Sciences, reflexology, bloodletting, and ear candling.

b. Category B specific continuing education requirements.

(1) A maximum of 12 hours of the 24 hours may be in any of the following:

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

1. Content areas that are programs of learning which contribute directly to professional competency and enhance the practice of the licensee.

2. Content areas that are hands-on training programs.

(2) Programs that are taken in Category B do not have to be sponsored by organizations noted in 133.3(2)"a"(1)"3" and instructors do not have to have a minimum of five years of clinical experience in massage/bodywork therapy.

(3) A licensee may receive credit on a one-time basis, not to exceed two hours of continuing education credit every two years, for delivery of course(s) in a massage school setting, if the following criteria are met:

1. The course(s) is part of a curriculum approved by the board as outlined in 645—132.4(152C);

2. The licensee is qualified to teach the course(s) as outlined in 645—132.3(152C);

3. The school provides an official written statement that verifies the following:

- Course title and number of credit hours;
- Inclusive dates the course was taught by the licensee;
- Teaching qualifications of the licensee.

(4) A maximum of six hours may be obtained in independent study courses in the areas of massage/bodywork techniques, ethics, mandatory reporter training, and practice management.

(5) A licensee shall obtain two hours of credit in CPR for every two-year renewal period.

(6) Only the number of hours obtained during the two-year renewal period to meet mandatory reporter training requirements may be utilized in the renewal period. No hours shall be carried over into the next biennium.

(7) Excluded content areas for continuing education in Category B include, but are not limited to, any program or training that is outside the scope of practice of massage therapy in accordance with the definition of massage therapy set forth in rule 645—131.1(152C) or that does not enhance professional competency relating to the field of massage/bodywork therapy. Bloodletting and ear candling are excluded content areas.

645—133.4(152C,272C) Audit of continuing education report. After every two-year renewal period, the board may audit licensees to review compliance with continuing education requirements.

133.4(1) The board may audit a percentage of its licensees and may, at its discretion, audit a licensee. A licensee whose license renewal application is submitted during the grace period may be subject to a continuing education audit.

133.4(2) The licensee shall provide the following information to the board for auditing purposes:

a. Date and location of course, course title, course description, names and qualifications of instructors/speakers and method of presentation; or a program brochure which includes all the information required in this paragraph;

b. Number of contact hours for program attended; and

c. Individual certificate of completion issued to the licensee or evidence of successful completion of the course from the course sponsor.

133.4(3) For auditing purposes, all licensees must retain the information identified in subrule 133.4(2) for two years after the renewal period has ended.

133.4(4) Information identified in subrule 133.4(2) must be submitted within one month after the date of notification of the audit. An extension of time may be granted on an individual basis.

133.4(5) If the submitted materials are incomplete or unsatisfactory, the licensee may be given the opportunity to submit make-up credit to cover the deficit found through the audit if the board determines that the deficiency was the result of good-faith conduct on the part of the licensee. The deadline for receipt of the documentation for this make-up credit is 120 days from the date of mailing to the address of record at the board office.

133.4(6) Failure to notify the board of a current mailing address will not absolve the licensee from the audit requirement, and an audit must be completed before license renewal.

645—133.5(152C,272C) Automatic exemption. A licensee shall be exempt from the continuing education requirement during the license biennium when that person:

1. Served honorably on active duty in the military service; or

2. Resided in another state or district having continuing education requirements for the profession and met all requirements of that state or district for practice therein; or

3. Was a government employee working in the licensee's specialty and assigned to duty outside the United States; or

4. Was absent from the state but engaged in active practice under circumstances which are approved by the board.

645—133.6(152C,272C) Continuing education exemption for disability or illness. A licensee who has had a physical or mental disability or illness during the license period may apply for an exemption. An exemption provides for an extension of time or exemption from some or all of the continuing education requirements. An applicant shall submit a completed application form approved by the board for an exemption. The application form is available upon request from the board office. The application requires the signature of a licensed health care professional who can attest to the existence of a disability or illness during the license period. If the application is from a licensee who is the primary caregiver to a relative who is ill or disabled and needs care from that primary caregiver, the physician shall verify the licensee's status as the primary caregiver. A licensee who applies for an exemption shall be notified of the decision regarding the application. A licensee who obtains approval shall retain a copy of the exemption to be presented to the board upon request.

133.6(1) The board may grant an extension of time to fulfill the continuing education requirement.

133.6(2) The board may grant an exemption from the continuing education requirement for any period of time not to exceed two calendar years. If the physical or mental disability or illness for which an extension or exemption was granted continues beyond the period initially approved by the board, the licensee must reapply for a continuance of the extension or exemption.

133.6(3) The board may, as a condition of any extension or exemption granted, require the licensee to make up a portion of the continuing education requirement in a manner determined by the board.

645—133.7(152C,272C) Grounds for disciplinary action. The board may take formal disciplinary action on the following grounds:

133.7(1) Failure to cooperate with a board audit.

133.7(2) Failure to meet the continuing education requirement for licensure.

133.7(3) Falsification of information on the license renewal form.

133.7(4) Falsification of continuing education information.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

These rules are intended to implement Iowa Code chapters 21, 147, 152C and 272C.

NOTICE—USURY

In accordance with the provisions of Iowa Code section 535.2, subsection 3, paragraph "a," the Superintendent of Banking has determined that the maximum lawful rate of interest shall be:

January 1, 2006 — January 31, 2006	6.50%
February 1, 2006 — February 28, 2006	6.50%
March 1, 2006 — March 31, 2006	6.50%
April 1, 2006 — April 30, 2006	6.50%
May 1, 2006 — May 31, 2006	6.75%
June 1, 2006 — June 30, 2006	7.00%
July 1, 2006 — July 31, 2006	7.00%
August 1, 2006 — August 31, 2006	7.25%
September 1, 2006 — September 30, 2006	7.00%
October 1, 2006 — October 31, 2006	7.00%
November 1, 2006 — November 30, 2006	6.75%
December 1, 2006 — December 31, 2006	6.75%
January 1, 2007 — January 31, 2007	6.50%

ARC 5646B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 234.6 and 2006 Iowa Acts, chapter 1184, section 13, the Department of Human Services amends Chapter 51, "Eligibility," and Chapter 52, "Payment," Iowa Administrative Code.

These amendments implement the annual adjustments to eligibility and payment levels in the State Supplementary Assistance Program that are necessary to meet the federal "pass-along" requirements specified in Title XVI of the Social Security Act. The State of Iowa uses the payment levels method of compliance, which requires the State to increase the payment amounts and income limits for State Supplementary Assistance categories effective January 1 of each year as necessary to meet the minimum levels required by the federal government. The minimum levels are indexed by the cost-of-living increase in federal Social Security and Supplemental Security Income (SSI) benefits, which is 3.3 percent for calendar year 2007.

Changes necessary to meet federal pass-along requirements for 2007 are as follows:

- Increasing the income limit and payment standard for dependent relatives from $306 per month to $317 per month.
- Increasing the dependent relative income limits by $31 per month for an eligible individual (from $909 to $940) and $41 per month for an eligible couple (from $1210 to $1251).
- Increasing the family life home income limit by $20 per month (from $765 to $785).
- Increasing the maximum family life home payment by $24 per month (from $673 to $697).
- Increasing the maximum residential care per diem rate by $0.65 (from $25.85 to $26.50).

State legislation also requires the Department to increase the personal needs allowance for residents of residential care facilities at the same percentage and at the same time as federal Social Security and SSI benefits are increased. However, the amount added to the personal needs allowance for Medicaid copayment is decreased for 2007 due to the transfer of drug coverage to Medicare. Therefore, these amendments decrease the residential care facility and family life home personal needs allowances by $4 per month (from $92 to $88). A deduction from income can be allowed for people who have unmet medical needs, including Medicare Part D copayments.

These amendments do not provide for waivers in specified situations because they benefit the people affected by increasing payment levels.

The Council on Human Services adopted these amendments December 13, 2006.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are unnecessary because these amendments implement 2006 Iowa Acts, chapter 1184, section 13, which authorizes the Department to adopt rules without notice and public participation.

The Department also finds, pursuant to Iowa Code sections 17A.5(2)"b"(1) and 17A.5(2)"b"(2), that the normal effective date of these amendments should be waived, because the amendments confer a benefit by increasing income limits and payments and because emergency rule making is authorized by 2006 Iowa Acts, chapter 1184, section 13.

These amendments are also published herein under Notice of Intended Action as **ARC 5645B** to allow for public comment.

These amendments are intended to implement Iowa Code chapter 249 and 2006 Iowa Acts, chapter 1184, section 13.

These amendments became effective January 1, 2007.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are adopted.

ITEM 1. Amend subrule 51.4(1) as follows:

51.4(1) Income. Income of a dependent relative shall be less than ~~$306~~ *$317*. When the dependent's income is from earnings, an exemption of $65 shall be allowed to cover work expense.

ITEM 2. Amend rule 441—51.7(249), introductory paragraph, as follows:

441—51.7(249) Income from providing room and board. In determining profit from furnishing room and board or providing family life home care, ~~$306~~ *$317* per month shall be deducted to cover the cost, and the remaining amount treated as earned income.

ITEM 3. Amend rule 441—52.1(249) as follows:

Amend subrules 52.1(1) and 52.1(2) as follows:

52.1(1) Protective living arrangement. The following assistance standards have been established for state supplementary assistance for persons living in a family life home certified under rules in 441—Chapter 111.

~~$673~~	*$697*	Care allowance
~~$ 92~~	*$ 88*	Personal allowance
~~$765~~	*$785*	Total

52.1(2) Dependent relative. The following assistance standards have been established for state supplementary assistance for dependent relatives residing in a recipient's home.

a. Aged or disabled client and a dependent relative . . . . . ~~$909~~ *$940*
b. Aged or disabled client, eligible spouse, and a dependent relative . . . . ~~$1210~~ *$1251*
c. Blind client and a dependent relative . . . . ~~$931~~ *$962*
d. Blind client, aged or disabled spouse, and a dependent relative . . . . . ~~$1232~~ *$1273*
e. Blind client, blind spouse, and a dependent relative . . . . . ~~$1254~~ *$1295*

Amend subrule 52.1(3) as follows:

Amend the introductory paragraph as follows:

52.1(3) Residential care. Payment to a recipient in a residential care facility shall be made on a flat per diem rate of $17.86 or on a cost-related reimbursement system with a maximum per diem rate of ~~$25.85~~ *$26.50*. The department shall establish a cost-related per diem rate for each facility choosing this method of payment according to rule 441—54.3(249).

Amend paragraph **"a,"** subparagraph **(2)**, as follows:

(2) An allowance of ~~$92~~ *$88* to meet personal expenses and Medicaid copayment expenses.

[Filed Emergency 12/13/06, effective 1/1/07]
[Published 1/3/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/3/07.

ARC 5650B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 77, "Conditions of Participation for Providers of Medical and Remedial Care," Chapter 78, "Amount, Duration, and Scope of Medical and Remedial Services," and Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

These amendments add home- and community-based habilitation services as a new category of services covered under Medicaid. Beginning in January 2007, Section 6086 of the Deficit Reduction Act of 2005, Public Law 109-171, allows states to cover home- and community-based long-term care services for Medicaid members with disabilities or chronic conditions. Using this option, the Department has worked with federal officials to design a new program to meet the nonrehabilitative service needs of Medicaid members who currently receive rehabilitation services for adults with chronic mental illness (also known as the "adult rehabilitation option" or "ARO").

Coverage for ARO services is being discontinued under rules recently adopted for remedial services. (See **ARC 5514B**, published in the Iowa Administrative Bulletin on November 8, 2006.) The Department determined that changes to coverage of remedial services were necessary in order to ensure that the state remains in compliance with federal Medicaid regulations on rehabilitative services. Many services formerly covered under the ARO program are now covered as remedial services. However, remedial services do not include supervision or habilitation components.

These amendments define the amount, duration, and scope of covered home- and community-based habilitation services and set the provider requirements and reimbursement methodology. Service components include home-based habilitation, day habilitation, prevocational habilitation, and supported employment (activities to find and maintain employment). Case management is a covered service for members who are not otherwise eligible for Medicaid case management services.

To be eligible for habilitation services, members shall have a history of psychiatric illness, risk factors indicating a need for continuing supports, and a need for one or more of the covered services as identified in a comprehensive service plan developed by an interdisciplinary team. Federal legislation limits the income for members receiving these services to 150 percent of the federal poverty level.

Home-based habilitation services may be provided wherever a member lives, including a residential care facility of 16 or fewer persons. A daily rate may be developed for home-based habilitation when the member needs services 14 or more hours per day.

Utilization is controlled by limiting the number of slots available in the program and by limiting units of service and rates. Reimbursement for day habilitation, prevocational habilitation, and supported employment activities to obtain a job is based on a fee schedule. Reimbursement for home-based habilitation and supported employment supports to maintain employment is based on a retrospective cost-related rate calculated for each provider. The nonfederal share of the cost of habilitation services will be the responsibility of the member's county of legal settlement, as is the case with ARO services.

These amendments do not provide for waivers in specified situations. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

The Council on Human Services adopted these amendments on December 13, 2006.

The Department finds that notice and public participation are impracticable and contrary to the public interest. Under the rules adopted for remedial services, no new authorizations for ARO services will be issued after December 31, 2006. If Medicaid funding for habilitation services is not available, the costs for services to ARO recipients with habilitative needs will be funded entirely by county governments. Therefore, these amendments are filed pursuant to Iowa Code section 17A.4(2).

The Department finds that these amendments confer a benefit on the public by maximizing the availability of federal funds for services to people with chronic mental illness. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of these amendments should be waived.

These amendments are also published herein under Notice of Intended Action as **ARC 5649B** to allow for public comment.

These amendments are intended to implement Iowa Code section 249A.4.

These amendments became effective January 1, 2007.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are adopted.

ITEM 1. Amend 441—Chapter 77 by adopting **new** rule 441—77.25(249A) as follows:

441—77.25(249A) Home- and community-based habilitation services. To be eligible to participate in the Medicaid program as an approved provider of home- and community-based habilitation services, a provider shall meet the general requirements in subrules 77.25(2), 77.25(3), and 77.25(4) and shall meet the requirements in the subrules applicable to the individual services being provided.

77.25(1) Definitions.

"Guardian" means a guardian appointed in probate or juvenile court.

"Major incident" means an occurrence involving a member that:

1. Results in a physical injury to or by the member that requires a physician's treatment or admission to a hospital;
2. Results in someone's death;
3. Requires emergency mental health treatment for the member;
4. Requires the intervention of law enforcement;
5. Requires a report of child abuse pursuant to Iowa Code section 232.69 or a report of dependent adult abuse pursuant to Iowa Code section 235B.3; or
6. Constitutes a prescription medication error or a pattern of medication errors that could lead to the outcome in paragraph "1," "2," or "3."

"Minor incident" means an occurrence involving a member that is not a major incident and that:

1. Results in the application of basic first aid;
2. Results in bruising;

3. Results in seizure activity;
4. Results in injury to self, to others, or to property; or
5. Constitutes a prescription medication error.

77.25(2) Organization and staff.

a. The prospective provider shall demonstrate the fiscal capacity to initiate and operate the specified programs on an ongoing basis.

b. The provider shall complete child abuse, dependent adult abuse, and criminal background screenings pursuant to Iowa Code section 249A.29 before employing a staff member who will provide direct care.

c. A staff member providing direct care shall be at least 18 years of age.

d. A staff member providing direct care shall not be an immediate family member of the member.

77.25(3) Incident reporting. The provider shall document major and minor incidents and shall make the incident reports and related documentation available to the department upon request. The provider shall ensure cooperation in providing pertinent information regarding incidents as requested by the department.

a. Report form. Each major or minor incident shall be recorded on an incident report form that is completed and signed by the staff who were directly involved at the time of the incident or who first became aware of the incident. The report shall include the following information:

(1) The name of the member involved.

(2) The date and time the incident occurred.

(3) A description of the incident.

(4) The names of all provider staff and others who were present at the time of the incident or responded after becoming aware of the incident. The confidentiality of other members who are involved in the incident must be maintained by the use of initials or other means.

(5) The action that the staff took to handle the incident.

(6) The resolution of or follow-up to the incident.

b. Reporting procedure for major incidents. When a major incident occurs, provider staff shall notify the member or the member's legal guardian within 72 hours of the incident and shall distribute the completed incident report form as follows:

(1) Forward the report to the supervisor within 24 hours of the incident.

(2) Send a copy of the report to the member's Medicaid targeted case manager and the department's bureau of long-term care within 72 hours of the incident.

(3) File a copy of the report in a centralized location and make a notation in the member's file.

c. Reporting procedure for minor incidents. When a minor incident occurs, provider staff shall distribute the completed incident report form as follows:

(1) Forward the report to the supervisor within 24 hours of the incident.

(2) File a copy of the report in a centralized location and make a notation in the member's file.

77.25(4) Restraint, restriction, and behavioral intervention. The provider shall have in place a system for the review, approval, and implementation of ethical, safe, humane, and efficient behavioral intervention procedures. All members receiving home- and community-based habilitation services shall be afforded the protections imposed by these rules when any restraint, restriction, or behavioral intervention is implemented.

a. The system shall include procedures to inform the member and the member's legal guardian of the restraint, restriction, and behavioral intervention policy and procedures at the time of service approval and as changes occur.

b. Restraint, restriction, and behavioral intervention shall be used only for reducing or eliminating maladaptive target behaviors that are identified in the member's restraint, restriction, or behavioral intervention program.

c. Restraint, restriction, and behavioral intervention procedures shall be designed and implemented only for the benefit of the member and shall never be used as punishment, for the convenience of the staff, or as a substitute for a nonaversive program.

d. Restraint, restriction, and behavioral intervention programs shall be time-limited and shall be reviewed at least quarterly.

e. Corporal punishment and verbal or physical abuse are prohibited.

77.25(5) Case management. The department of human services, a county or consortium of counties, or a provider under subcontract to the department or to a county or consortium of counties is eligible to participate in the home- and community-based habilitation services program as a provider of case management services provided that the agency meets the standards in 441—Chapter 24.

77.25(6) Day habilitation. The following providers may provide day habilitation:

a. An agency that is accredited by the Commission on Accreditation of Rehabilitation Facilities to provide services that qualify as day habilitation under 441—subrule 78.27(8).

b. An agency that is accredited by the Commission on Accreditation of Rehabilitation Facilities to provide other services and began providing services that qualify as day habilitation under 441—subrule 78.27(8) since the agency's last accreditation survey. The agency may provide day habilitation services until the current accreditation expires. When the current accreditation expires, the agency must qualify under paragraph "a" or "d."

c. An agency that is not accredited by the Commission on Accreditation of Rehabilitation Facilities but has applied to the Commission within the last 12 months for accreditation to provide services that qualify as day habilitation under 441—subrule 78.27(8). An agency that has not received accreditation within 12 months after application to the Commission is no longer a qualified provider.

d. An agency that is accredited by the Council on Quality and Leadership in Supports for People with Disabilities.

e. An agency that has applied to the Council on Quality and Leadership in Supports for People with Disabilities for accreditation within the last 12 months. An agency that has not received accreditation within 12 months after application to the Council is no longer a qualified provider.

f. An agency that is accredited under 441—Chapter 24 to provide day treatment or supported community living services.

g. A residential care facility of more than 16 beds that is licensed by the Iowa department of inspections and appeals, was enrolled as a provider of rehabilitation services for adults with chronic mental illness before December 31, 2006, and has applied for accreditation through one of the accrediting bodies listed in this subrule.

(1) The facility must have policies in place by June 30, 2007, consistent with the accreditation being sought.

(2) A facility that has not received accreditation within 12 months after application for accreditation is no longer a qualified provider.

77.25(7) Home-based habilitation. The following agencies may provide home-based habilitation services:

a. An agency that is certified by the department to provide home-based habilitation services. The agency must meet the requirements for organizational and outcome standards set forth in 441—subrules 77.37(1) through 77.37(6) and 77.37(9) through 77.37(12).

b. An agency that is accredited under 441—Chapter 24 to provide supported community living services.

c. An agency that is accredited by the Commission on Accreditation of Rehabilitation Facilities as a community housing or supported living service provider.

d. An agency that is accredited by the Council on Quality and Leadership in Supports for People with Disabilities.

e. An agency that is accredited by the Council on Accreditation of Services for Families and Children.

f. An agency that is accredited by the Joint Commission on Accreditation of Healthcare Organizations.

g. A residential care facility of 16 or fewer beds that is licensed by the Iowa department of inspections and appeals, was enrolled as a provider of rehabilitation services for adults with chronic mental illness before December 31, 2006, and has applied for accreditation through one of the accrediting bodies listed in this subrule.

(1) The facility must have policies in place by June 30, 2007, consistent with the accreditation being sought.

(2) A facility that has not received accreditation within 12 months after application for accreditation is no longer a qualified provider.

77.25(8) Prevocational habilitation. The following providers may provide prevocational services:

a. An agency that is accredited by the Commission on Accreditation of Rehabilitation Facilities as an organizational employment service provider.

b. An agency that is accredited by the Council on Quality and Leadership in Supports for People with Disabilities.

77.25(9) Supported employment habilitation. The following agencies may provide supported employment services:

a. An agency that is certified by the department to provide supported employment services under:

(1) The home- and community-based services mental retardation waiver pursuant to rule 441—77.37(249A); or

(2) The home- and community-based services brain injury waiver pursuant to rule 441—77.39(249A).

b. An agency that is accredited by the Commission on Accreditation of Rehabilitation Facilities as an organizational employment service provider.

c. An agency that is accredited by the Council on Accreditation of Services for Families and Children.

d. An agency that is accredited by the Joint Commission on Accreditation of Healthcare Organizations.

77.25(10) Provider enrollment. A prospective provider that meets the criteria in this rule shall be enrolled as an approved provider of a specific component of home- and community-based habilitation services. Enrollment carries no assurance that the approved provider will receive funding. Payment for services will be made to a provider only upon department approval of the provider and of the service the provider is authorized to provide.

a. The Iowa Medicaid enterprise shall review compliance with standards for initial enrollment. Review of a provider may occur at any time.

b. The department may request any information from the prospective service provider that is pertinent to arriving at an enrollment decision. This information may include:

(1) Current accreditations.

(2) Evaluations.

(3) Inspection reports.

(4) Reviews by regulatory and licensing agencies and associations.

This rule is intended to implement Iowa Code section 249A.4.

ITEM 2. Amend 441—Chapter 78 by adopting **new** rule 441—78.27(249A) as follows:

441—78.27(249A) Home- and community-based habilitation services.

78.27(1) Definitions.

"Adult" means a person who is 18 years of age or older.

"Assessment" means the review of the current functioning of the member using the service in regard to the member's situation, needs, strengths, abilities, desires, and goals.

"Case management" means case management services accredited under 441—Chapter 24 and provided according to 441—Chapter 90.

"Comprehensive service plan" means an individualized, goal-oriented plan of services written in language understandable by the member using the service and developed collaboratively by the member and the case manager.

"Department" means the Iowa department of human services.

"Emergency" means a situation for which no approved individual program plan exists that, if not addressed, may result in injury or harm to the member or to other persons or in significant amounts of property damage.

"HCBS" means home- and community-based services.

"Interdisciplinary team" means a collection of persons with varied professional backgrounds who meet with the member to develop a comprehensive service plan to meet the member's need for services.

"ISIS" means the department's individualized services information system.

"Member" means a person who has been determined to be eligible for Medicaid under 441—Chapter 75.

"Program" means a set of related resources and services directed to the accomplishment of a fixed set of goals for qualifying members.

78.27(2) Member eligibility. To be eligible to receive home- and community-based habilitation services, a member shall meet the following criteria:

a. Risk factors. The member has at least one of the following risk factors:

(1) The member has undergone or is currently undergoing psychiatric treatment more intensive than outpatient care (e.g., emergency services, alternative home care, partial hospitalization, or inpatient hospitalization) more than once in a member's life; or

(2) The member has a history of psychiatric illness resulting in at least one episode of continuous, professional supportive care other than hospitalization.

b. Need for assistance. The member has a need for assistance demonstrated by meeting at least two of the following criteria on a continuing or intermittent basis for at least two years:

(1) The member is unemployed, is employed in a sheltered setting, or has markedly limited skills and a poor work history.

(2) The member requires financial assistance for out-of-hospital maintenance and is unable to procure this assistance without help.

(3) The member shows severe inability to establish or maintain a personal social support system.

(4) The member requires help in basic living skills such as self-care, money management, housekeeping, cooking, and medication management.

(5) The member exhibits inappropriate social behavior that results in a demand for intervention.

c. Income. The countable income used in determining the member's Medicaid eligibility does not exceed 150 percent of the federal poverty level.

d. Needs assessment. The member's case manager has completed an assessment of the member's need for service, and, based on that assessment, the Iowa Medicaid enterprise medical services unit has determined that the member is in need of home- and community-based habilitation services. A member who is not eligible for Medicaid case management services under 441—Chapter 90 shall receive case management as a home- and community-based habilitation service. The designated case manager shall:

(1) Complete a needs-based evaluation that meets the standards for assessment established in 441—subrule 24.4(2) before services begin and annually thereafter.

(2) Use the evaluation results to develop a comprehensive service plan as specified in subrule 78.27(4).

e. Plan for service. The department has approved the member's plan for home- and community-based habilitation services. A service plan that has been validated through ISIS shall be considered approved by the department. Home- and community-based habilitation services provided before department approval of a member's eligibility for the program cannot be reimbursed.

(1) The member's comprehensive service plan shall be completed annually according to the requirements of subrule 78.27(4). A service plan may change at any time due to a significant change in the member's needs.

(2) A member shall not receive home- and community-based habilitation services while enrolled in a home- and community-based services waiver program under 441—Chapter 83.

(3) The member shall receive at least one billable unit of service other than case management per calendar quarter.

(4) The member's habilitation services shall not exceed the maximum number of units established for each service in 441—subrule 79.1(2).

(5) The cost of the habilitation services shall not exceed unit expense maximums established in 441—subrule 79.1(2).

78.27(3) Application for services. The case manager shall apply for services on behalf of a member by entering a program request for habilitation services in ISIS.

a. Assignment of payment slot. The number of persons who may be approved for home- and community-based habilitation services is subject to a yearly total to be served. The total is set by the department based on available funds and is contained in the Medicaid state plan approved by the federal Centers for Medicare and Medicaid Services. The limit is maintained through the awarding of "payment slots" to members applying for services.

(1) The case manager shall contact the Iowa Medicaid enterprise through ISIS to determine if a payment slot is available for each member applying for home- and community-based habilitation services.

(2) In assigning initial payment slots for the year beginning January 1, 2007, the department shall give preference to members who received rehabilitation services for adults with chronic mental illness between July 1, 2006, and December 31, 2006, and who request a payment slot before June 30, 2007. The department shall determine the number of slots needed to fulfill this preference as of December 31, 2006, and shall reserve the number of slots needed for members who could receive this preference. All remaining payment slots shall be available to members who are not eligible for this preference. If a member receiving a preference declines a payment slot, that slot shall become available to members who have not received a preference.

(3) When a payment slot is assigned, the case manager shall give written notice to the member.

(4) The department shall hold the assigned payment slot for the member as long as reasonable efforts are being made to arrange services and the member has not been determined to be ineligible for the program. If services have not been initiated and reasonable efforts are no longer being made to arrange services, the slot shall revert for use by the next applicant on the waiting list, if applicable. The member must reapply for a new slot.

b. Waiting list for payment slots. When the number of applications exceeds the number of members specified in the state plan and there are no available payment slots to be assigned, the member's application for habilitation services shall be denied. The department shall issue a notice of decision stating that the member's name will be maintained on a waiting list.

(1) The Iowa Medicaid enterprise shall enter the member on a waiting list based on the date and time when the member's request for habilitation services was entered into ISIS. In the event that more than one application is received at the same time, members shall be entered on the waiting list on the basis of the month of birth, January being month one and the lowest number.

(2) When a payment slot becomes available, the Iowa Medicaid enterprise shall notify the member's case manager, based on the member's order on the waiting list. The case manager shall give written notice to the member within five working days.

(3) The department shall hold the payment slot for 20 calendar days to allow the case manager to reapply for habilitation services by entering a program request through ISIS. If a request for habilitation services has not been entered within 20 calendar days, the slot shall revert for use by the next member on the waiting list, if applicable. The member assigned the slot must reapply for a new slot.

(4) The case manager shall notify the Iowa Medicaid enterprise within five working days of the withdrawal of an application.

c. Notice of decision. The department shall issue a notice of decision to the applicant when financial eligibility, determination of needs-based eligibility, and approval of the service plan have been completed.

78.27(4) Comprehensive service plan. Individualized, planned, and appropriate services shall be guided by a member-specific comprehensive service plan developed with the member in collaboration with an interdisciplinary team as appropriate. Medically necessary services shall be planned for and directed to where the member lives, learns, works, and socializes.

a. Development. A comprehensive service plan shall be developed for each member receiving home- and community-based habilitation services based on the member's current assessment and shall be reviewed on an annual basis.

(1) The case manager shall establish an interdisciplinary team for the member. The team shall include the case manager and the member and, if applicable, the member's legal representative, the member's family, the member's service providers, and others directly involved.

(2) With the interdisciplinary team, the case manager shall identify the member's services based on the member's

needs, the availability of services, and the member's choice of services and providers.

(3) The comprehensive service plan development shall be completed at the member's home or at another location chosen by the member.

(4) The interdisciplinary team meeting shall be conducted before the current comprehensive service plan expires.

(5) The comprehensive service plan shall reflect desired individual outcomes.

(6) Services defined in the comprehensive service plan shall be appropriate to the severity of the member's problems and to the member's specific needs or disabilities.

(7) Activities identified in the comprehensive service plan shall encourage the ability and right of the member to make choices, to experience a sense of achievement, and to modify or continue participation in the treatment process.

b. Service goals and activities. The comprehensive service plan shall:

(1) Identify observable or measurable individual goals.

(2) Identify interventions and supports needed to meet those goals with incremental action steps, as appropriate.

(3) Identify the staff people, businesses, or organizations responsible for carrying out the interventions or supports.

(4) List all Medicaid and non-Medicaid services received by the member and identify:

1. The name of the provider responsible for delivering the service;

2. The funding source for the service; and

3. The number of units of service to be received by the member.

(5) Identify for a member receiving home-based habilitation:

1. The member's living environment at the time of enrollment;

2. The number of hours per day of on-site staff supervision needed by the member; and

3. The number of other members who will live with the member in the living unit.

(6) Include a separate, individualized, anticipated discharge plan that is specific to each service the member receives.

c. Rights restrictions. Any rights restrictions must be implemented in accordance with 441—subrule 77.25(4). The comprehensive service plan shall include documentation of:

(1) Any restrictions on the member's rights, including maintenance of personal funds and self-administration of medications;

(2) The need for the restriction; and

(3) Either a plan to restore those rights or written documentation that a plan is not necessary or appropriate.

d. Emergency plan. The comprehensive service plan shall include a plan for emergencies and identification of the supports available to the member in an emergency. Emergency plans shall be developed as follows:

(1) The member's interdisciplinary team shall identify in the comprehensive service plan any health and safety issues applicable to the individual member based on information gathered before the team meeting, including a risk assessment.

(2) The interdisciplinary team shall identify an emergency backup support and crisis response system to address problems or issues arising when support services are interrupted or delayed or the member's needs change.

(3) Providers of applicable services shall provide for emergency backup staff.

e. Plan approval. Services shall be entered into ISIS based on the comprehensive service plan. A service plan that has been validated and authorized through ISIS shall be considered approved by the department. Services must be authorized in ISIS before the service implementation date.

78.27(5) Requirements for services. Home- and community-based habilitation services shall be provided in accordance with the following requirements:

a. The services shall be based on the member's needs as identified in the member's comprehensive service plan.

b. The services shall be delivered in the least restrictive environment appropriate to the needs of the member.

c. The services shall include the applicable and necessary instruction, supervision, assistance, and support required by the member to achieve the member's life goals.

d. Service components that are the same or similar shall not be provided simultaneously.

e. Service costs are not reimbursable while the member is in a medical institution, including but not limited to a hospital or nursing facility.

f. Reimbursement is not available for room and board.

g. Services shall be billed in whole units.

h. Services shall be documented. Each unit billed must have corresponding financial and medical records as set forth in rule 441—79.3(249A).

78.27(6) Case management. Case management assists members in gaining access to needed home- and community-based habilitation services, as well as medical, social, educational, and other services, regardless of the funding source for the services.

a. Scope. Case management services shall be provided as set forth in rule 441—90.5(249A). The case manager shall be responsible for the following activities:

(1) Explaining the member's right to freedom of choice.

(2) Ensuring that all unmet needs of the member are identified in the service plan.

(3) Retaining the comprehensive service plan, as specified in rule 441—79.3(249A).

(4) Explaining to the member what abuse is, and how to report abuse.

(5) Explaining to the member how to make a complaint about the member's services or providers.

(6) Monitoring the service plan, with review occurring regularly.

(7) Meeting with the member face to face at least quarterly.

(8) Assessing and revising the service plan at least annually to determine achievement, continued need, or change in goals or intervention methods. The review shall include the member using the service and shall involve the interdisciplinary team.

(9) Notifying the member of any changes in the service plan by sending the member a notice of decision. When the change is an adverse action such as a reduction in services, the notice shall be sent ten days before the change and shall include appeal rights.

b. Exclusion. Payment shall not be made for case management provided to a member who is eligible for case management services under 441—Chapter 90.

78.27(7) Home-based habilitation. "Home-based habilitation" means individually tailored supports that assist with the acquisition, retention, or improvement of skills related to living in the community.

a. Scope. Home-based habilitation services are individualized supportive services provided in the member's home that assist the member to reside in the most integrated setting

appropriate to the member's needs. Services are intended to provide for the daily living needs of the member and shall be available as needed during any 24-hour period. The specific support needs for each member shall be determined necessary by the interdisciplinary team and shall be identified in the member's comprehensive service plan. Covered supports include:

(1) Adaptive skill development;
(2) Assistance with activities of daily living;
(3) Community inclusion;
(4) Transportation;
(5) Adult educational supports;
(6) Social and leisure skill development;
(7) Personal care; and
(8) Protective oversight and supervision.

b. Exclusions. Home-based habilitation payment shall not be made for the following:

(1) Room and board and maintenance costs, including the cost of rent or mortgage, utilities, telephone, food, household supplies, and building maintenance, upkeep, or improvement.

(2) Service activities associated with vocational services, day care, medical services, or case management.

(3) Transportation to and from a day program.

(4) Services provided to a member who lives in a licensed residential care facility of more than 16 persons.

(5) Services provided to a member who lives in a facility that provides the same service as part of an inclusive or "bundled" service rate, such as a nursing facility or an intermediate care facility for persons with mental retardation.

78.27(8) Day habilitation. "Day habilitation" means assistance with acquisition, retention, or improvement of self-help, socialization, and adaptive skills.

a. Scope. Day habilitation activities and environments are designed to foster the acquisition of skills, appropriate behavior, greater independence, and personal choice. Services focus on enabling the member to attain or maintain the member's maximum functional level and shall be coordinated with any physical, occupational, or speech therapies in the comprehensive service plan. Services may serve to reinforce skills or lessons taught in other settings. Services must enhance or support the member's:

(1) Intellectual functioning;
(2) Physical and emotional health and development;
(3) Language and communication development;
(4) Cognitive functioning;
(5) Socialization and community integration;
(6) Functional skill development;
(7) Behavior management;
(8) Responsibility and self-direction;
(9) Daily living activities;
(10) Self-advocacy skills; or
(11) Mobility.

b. Setting. Day habilitation shall take place in a nonresidential setting separate from the member's residence. Services shall not be provided in the member's home. When the member lives in a residential care facility of more than 16 beds, day habilitation services provided in the facility are not considered to be provided in the member's home if the services are provided in an area apart from the member's sleeping accommodations.

c. Duration. Day habilitation services shall be furnished for four or more hours per day on a regularly scheduled basis for one or more days per week or as specified in the member's comprehensive service plan. Meals provided as part of day habilitation shall not constitute a full nutritional regimen (three meals per day).

d. Exclusions. Day habilitation payment shall not be made for the following:

(1) Vocational or prevocational services.

(2) Services that duplicate or replace education or related services defined in Public Law 94-142, the Education of the Handicapped Act.

(3) Compensation to members for participating in day habilitation services.

78.27(9) Prevocational habilitation. "Prevocational habilitation" means services that prepare a member for paid or unpaid employment.

a. Scope. Prevocational habilitation services include teaching concepts such as compliance, attendance, task completion, problem solving, and safety. Services are not oriented to a specific job task, but instead are aimed at a generalized result. Services shall be reflected in the member's comprehensive service plan and shall be directed to habilitative objectives rather than to explicit employment objectives.

b. Setting. Prevocational habilitation services may be provided in a variety of community-based settings based on the individual need of the member. Meals provided as part of these services shall not constitute a full nutritional regimen (three meals per day).

c. Exclusions. Prevocational habilitation payment shall not be made for the following:

(1) Services that are available under a program funded under Section 110 of the Rehabilitation Act of 1973 or the Individuals with Disabilities Education Act (20 U.S.C. 1401 et seq.). Documentation that funding is not available for the service under these programs shall be maintained in the file of each member receiving prevocational habilitation.

(2) Services that duplicate or replace education or related services defined in Public Law 94-142, the Education of the Handicapped Act.

(3) Compensation to members for participating in prevocational services.

78.27(10) Supported employment habilitation. "Supported employment habilitation" means services associated with maintaining competitive paid employment.

a. Scope. Supported employment habilitation services are intensive, ongoing supports that enable members to perform in a regular work setting. Services are provided to members who need support because of their disabilities and who are unlikely to obtain competitive employment at or above the minimum wage absent the provision of supports. Covered services include:

(1) Activities to obtain a job, including the following services provided to or on behalf of the member:

1. Initial vocational and educational assessment to develop interventions with the member or the employer that affect the member's work.
2. Job development.
3. On-site vocational assessment before employment.
4. Disability-related support for vocational training or paid internships.
5. Assistance in helping the member learn the skills necessary for job retention, including skills to arrange and use supported employment transportation, and for job exploration.

(2) Supports to maintain employment, including the following services provided to or on behalf of the member:

1. Individual work-related behavioral management.
2. Job coaching.
3. On-the-job or work-related crisis intervention.

4. Assistance in the use of skills related to sustaining competitive paid employment, including assistance with communication skills, problem solving, and safety.
5. Assistance with time management.
6. Assistance with appropriate grooming.
7. Employment-related supportive contacts.
8. On-site vocational assessment after employment.
9. Employer consultation.

b. Setting. Supported employment may be conducted in a variety of settings, particularly work sites where persons without disabilities are employed.

(1) The majority of coworkers at any employment site with more than two employees where members seek, obtain, or maintain employment must be persons without disabilities.

(2) In the performance of job duties at any site where members seek, obtain, or maintain employment, the member must have daily contact with other employees or members of the general public who do not have disabilities, unless the absence of daily contact with other employees or the general public is typical for the job as performed by persons without disabilities.

(3) When services for maintaining employment are provided to members in a teamwork or "enclave" setting, the team shall include no more than eight people with disabilities.

c. Service requirements. The following requirements shall apply to all supported employment services:

(1) All supported employment services shall provide individualized and ongoing support contacts at intervals necessary to promote successful job retention.

(2) The provider shall provide employment-related adaptations required to assist the member in the performance of the member's job functions as part of the service.

(3) Community transportation options (such as carpools, coworkers, self or public transportation, families, volunteers) shall be attempted before the service provider provides transportation. When no other resources are available, employment-related transportation between work and home and to or from activities related to employment may be provided as part of the service.

(4) Members may access both services to maintain employment and services to obtain a job for the purpose of job advancement or job change. A member may receive a maximum of three job placements in a 12-month period and a maximum of 40 units per week of services to maintain employment.

d. Exclusions. Supported employment habilitation payment shall not be made for the following:

(1) Services that are available under a program funded under Section 110 of the Rehabilitation Act of 1973 or the Individuals with Disabilities Education Act (20 U.S.C. 1401 et seq.). Documentation that funding is not available under these programs shall be maintained in the file of each member receiving supported employment services.

(2) Incentive payments made to an employer to encourage or subsidize the employer's participation in a supported employment program.

(3) Subsidies or payments that are passed through to users of supported employment programs.

(4) Training that is not directly related to a member's supported employment program.

(5) Services involved in placing or maintaining members in day activity programs, work activity programs, or sheltered workshop programs.

(6) Supports for volunteer work or unpaid internships.

(7) Tuition for education or vocational training.

(8) Individual advocacy that is not member-specific.

78.27(11) Adverse service actions.

a. Denial. Services shall be denied when the department determines that:

(1) A payment slot is not available to the member pursuant to paragraph 78.27(3)"a."

(2) The member is not eligible for or in need of home- and community-based habilitation services.

(3) The service is not identified in the member's comprehensive service plan.

(4) Needed services are not available or received from qualifying providers, or no qualifying providers are available.

(5) The member's service needs exceed the unit or reimbursement maximums for a service as set forth in 441—subrule 79.1(2).

(6) Completion or receipt of required documents for the program has not occurred.

b. Reduction. A particular home- and community-based habilitation service may be reduced when the department determines that continued provision of service at its current level is not necessary.

c. Termination. A particular home- and community-based habilitation service may be terminated when the department determines that:

(1) The member's income exceeds the allowable limit, or the member no longer meets other eligibility criteria for the program established by the department.

(2) The service is not identified in the member's comprehensive service plan.

(3) Needed services are not available or received from qualifying providers, or no qualifying providers are available.

(4) The member's service needs are not being met by the services provided.

(5) The member has received care in a medical institution for 30 consecutive days in any one stay. When a member has been an inpatient in a medical institution for 30 consecutive days, the department will issue a notice of decision to inform the member of the service termination. If the member returns home before the effective date of the notice of decision and the member's condition has not substantially changed, the decision shall be rescinded, and eligibility for home- and community-based habilitation services shall continue.

(6) The member's service needs exceed the unit or reimbursement maximums for a service as established by the department.

(7) Duplication of services provided during the same period has occurred.

(8) The member or the member's legal representative, through the interdisciplinary process, requests termination of the service.

(9) Completion or receipt of required documents for the program has not occurred, or the member refuses to allow documentation of eligibility as to need and income.

d. Appeal rights. The department shall give notice of any adverse action and the right to appeal in accordance with 441—Chapter 7. The member is entitled to have a review of the determination of needs-based eligibility by the Iowa Medicaid enterprise medical services unit by sending a letter requesting a review to the medical services unit. If dissatisfied with that decision, the member may file an appeal with the department.

78.27(12) County reimbursement. The county board of supervisors of the member's county of legal settlement shall

reimburse the department for all of the nonfederal share of the cost of home- and community-based habilitation services provided to an adult member with a chronic mental illness. The department shall notify the county's central point of coordination administrator through ISIS of the approval of the member's service plan.

This rule is intended to implement Iowa Code section 249A.4.

ITEM 3. Amend rule 441—79.1(249A) as follows:

Amend subrule **79.1(2)** by adopting the following **new** provider category in alphabetical order:

Provider category	Basis of reimbursement	Upper limit
Home- and community-based habilitation services:		
1. Case management	Fee schedule	$592.75 per month.
2. Home-based habilitation	Retrospective cost-related. See 79.1(24)	$34.63 per hour or $78.10 per day.
3. Day habilitation	Fee schedule	$13.08 per hour, $31.83 per half-day, or $63.65 per day.
4. Prevocational habilitation	Fee schedule	$9.81 per hour, $23.87 per half-day, or $47.74 per day.
5. Supported employment:		
Activities to obtain a job	Fee schedule	$500 per job, not to exceed $1,500 per year.
Supports to maintain employment	Retrospective cost-related. See 79.1(24)	$6.13 per hour for services in an enclave setting; $19.61 per hour for personal care; and $34.63 per hour for all other services. Total not to exceed $2,855.16 per month. Maximum of 40 units per week.

Adopt **new** subrule 79.1(24) as follows:

79.1(24) Reimbursement for home- and community-based habilitation services. Reimbursement for day habilitation, prevocational habilitation, and supported employment activities to obtain a job is based on a fee schedule developed using the methodology described in paragraph 79.1(1)"c." Reimbursement for home-based habilitation and supported employment supports to maintain employment is based on a retrospective cost-related rate calculated using the methodology in subrule 79.1(24). All rates are subject to the upper limits established in subrule 79.1(2).

a. Units of service.

(1) A unit of case management is one month.

(2) A unit of home-based habilitation is one hour. EXCEPTIONS:

1. A unit of service is one day when a member receives direct supervision for 14 or more hours per day, averaged over a calendar month. The member's comprehensive service plan must identify and reflect the need for this amount of supervision. The provider's documentation must support the number of direct support hours identified in the comprehensive service plan.

2. When cost-effective, a daily rate may be developed for members needing fewer than 14 hours of direct supervision per day. The provider must obtain approval from the Iowa Medicaid enterprise for a daily rate for fewer than 14 hours of service per day.

(3) A unit of day habilitation is an hour, a half-day (1 to 4 hours), or a full day (4 to 8 hours).

(4) A unit of prevocational habilitation is an hour, a half-day (1 to 4 hours), or a full day (4 to 8 hours).

(5) A unit of supported employment habilitation activities to obtain a job is one job placement. A "job placement" is defined as a period of competitive paid employment for a minimum of 30 consecutive days.

(6) A unit of supported employment habilitation supports to maintain employment is one hour.

b. Submission of cost reports. The department shall determine reasonable and proper costs of operation for home-based habilitation and supports to maintain employment based on cost reports submitted by the provider on Form 470-4425, Financial and Statistical Report for HCBS Habilitation Services.

(1) Financial information shall be based on the provider's financial records. When the records are not kept on an accrual basis of accounting, the provider shall make the adjustments necessary to convert the information to an accrual basis for reporting. Failure to maintain records to support the cost report may result in termination of the provider's Medicaid enrollment.

(2) For home-based habilitation, the provider's cost report shall reflect all staff-to-member ratios and costs associated with members' specific support needs. The provider must maintain records to support all expenditures.

(3) The provider shall submit the complete cost report to the IME Provider Cost Audit and Rate Setting Unit, P.O. Box 36450, Des Moines, Iowa 50315, within three months of the end of the provider's fiscal year.

(4) A provider may obtain a 30-day extension for submitting the cost report by sending a letter to the IME provider cost audit and rate setting unit before the cost report due date. No extensions will be granted beyond 30 days.

(5) A provider of services under multiple programs shall submit a cost allocation schedule, prepared in accordance with the generally accepted accounting principles and requirements specified in OMB Circular A-87. Costs reported under habilitation services shall not be reported as reimbursable costs under any other funding source. Costs incurred for other services shall not be reported as reimbursable costs under habilitation services.

(6) If a provider fails to submit a cost report that meets the requirement of paragraph 79.1(24)"b," the department shall reduce payment to 76 percent of the current rate. The reduced rate shall be paid for not longer than three months, after which time no further payments will be made.

(7) A projected cost report shall be submitted when a new habilitation services provider enters the program or an existing habilitation services provider adds a new service code. A prospective interim rate shall be established using the projected cost report. The effective date of the rate shall be the

day the provider becomes certified as a Medicaid provider or the day the new service is added.

c. Rate determination based on cost reports. Reimbursement for home-based habilitation and supports to maintain employment shall be made using a unit rate that is calculated retrospectively for each provider, considering reasonable and proper costs of operation.

(1) Interim rates. Providers shall be reimbursed through a prospective interim rate equal to the previous year's retrospectively calculated unit-of-service rate. Pending determination of habilitation services provider costs, the provider may bill for and shall be reimbursed at a unit-of-service rate that the provider and the Iowa Medicaid enterprise may reasonably expect to produce total payments to the provider for the provider's fiscal year that are consistent with Medicaid's obligation to reimburse that provider's reasonable costs.

(2) Audit of cost reports. Cost reports as filed shall be subject to review and audit by the Iowa Medicaid enterprise to determine the actual cost of services rendered to Medicaid members, using an accepted method of cost apportionment (as specified in OMB Circular A-87).

(3) Retroactive adjustment. When the reasonable and proper costs of operation are determined, a retroactive adjustment shall be made. The retroactive adjustment represents the difference between the amount that the provider received during the year for covered services through an interim rate and the reasonable and proper costs of operation determined in accordance with this subrule.

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ARC 5651B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services amends Chapter 156, "Payments for Foster Care and Foster Parent Training," Chapter 182, "Family-Centered Services," Chapter 185, "Rehabilitative Treatment Services," Chapter 201, "Subsidized Adoptions," Chapter 202, "Foster Care Services," and Chapter 204, "Subsidized Guardianship Program," Iowa Administrative Code.

These amendments change rules for child welfare services to accommodate Medicaid amendments that established a new service category, remedial services, to take the place of rehabilitative treatment services. (See **ARC 5514B**, published in the Iowa Administrative Bulletin on November 8, 2006.) Under the Medicaid amendments, the Department redefined the scope of covered services to match the definition of rehabilitative services in federal regulations. The way remedial services are provided under Medicaid has changed to reflect a medical model of rehabilitation.

After discussions with the Centers for Medicare and Medicaid Services (CMS) of the U.S. Department of Health and Human Services, the Department determined that those changes were necessary to ensure continued access to remedial services. The General Assembly, in 2006 Iowa Acts, chapter 1184 (House File 2734), section 10, subsection 11, directed the Department to submit a state plan amendment to CMS to implement the changes from rehabilitative treatment services to remedial services.

These amendments constitute an interim step in redesigning child welfare services to accommodate changes in Medicaid funding. Under these amendments:

- A new methodology is established for determining family foster care "difficulty of care" maintenance payments that is based on an assessment of the child's emotional, behavioral, and physical care needs. This method will apply to all placements made on or after January 1, 2007. Children in placement before January 1, 2007, will remain at the current payment rate for the duration of the placement.
- Rates for foster family respite care will be set using the same criteria as those used for regular foster family care.
- Rehabilitative treatment services under Chapter 185 are no longer provided in foster group care. Children in foster group care who need rehabilitation will receive remedial services funded through the Medicaid program as soon as services can be authorized and implemented.
- An interim rate methodology is established for group care maintenance and child welfare services to reflect an estimate that group care providers will provide an average of one hour per day of group remedial services and one hour per week of individual remedial services.
- Medicaid-eligible children who need in-home rehabilitative services will be served through the Medicaid program under the new remedial service category as soon as remedial services can be authorized and implemented.
- No authorizations for rehabilitative treatment or nonrehabilitative treatment services will be issued after December 31, 2006. Authorizations issued before January 1, 2007, may extend no longer than June 30, 2007. The Department will continue to issue authorizations for other family-centered services, including parental counseling and education, family team meeting facilitation, supervision, relative home study and home study update, community resource procurement, and flexible family support fund, and for family foster care supervision.
- The definitions of family-centered supervision and parental counseling and education components are revised to more clearly allow the Department to purchase supervision of sibling and parent-child visits, and to allow the Department to purchase a psychosocial evaluation relating to the child's safety, permanency, and well-being.

These amendments were previously Adopted and Filed Emergency and published in the Iowa Administrative Bulletin on November 8, 2006, as **ARC 5515B**. Notice of Intended Action to solicit comments on that submission was published in the Iowa Administrative Bulletin as **ARC 5516B** on the same date. The Department has received no comments on the Notice of Intended Action.

Due to issues raised in planning for implementation of the new policy on difficulty of care payments in foster family care, the Department has made the following changes since publication of the Notice:

- Paragraph "a" of subrule 156.6(4) is revised to specify an additional allowance of $5 per day instead of $4.94, and paragraphs "d" and "e" are revised to specify an additional allowance of $15 per day instead of $14.80. These changes make the additional allowances congruent with the payment levels under the new system and simplify administration and system programming.
- Paragraphs "a," "d," and "e" of subrule 156.6(4) are also revised to state that for placements made before January 1, 2007, the difficulty of care rate shall continue for the duration of the placement.

HUMAN SERVICES DEPARTMENT[441](cont'd)

- Paragraphs "f" and "h" of subrule 156.6(4) are combined into a new paragraph "f." Language is added to specify that Form 470-4401, Foster Child Behavioral Assessment, shall be completed within 30 days of the child's initial placement into foster care and that additional maintenance payments based on the form shall begin no earlier than the first day of the month following the month when the form is completed. This change allows the worker a specified period to complete the assessment to reflect the foster family's experience with the child. Provisions for review of the payment are included in a new subparagraph (2). The provision for a six-month review is deleted, and a provision is added for review before a court hearing on guardianship subsidy.
- Subrule 156.8(7) is amended to exclude difficulty of care allowances for sibling groups and transportation from the respite care rate. This change is consistent with the previous rules and reflects the temporary nature of respite care.
- Amendments to subrule 201.5(9) on payment for adoption subsidy and to paragraph 204.4(2)"a" on payment for guardianship subsidy are added. The maximum amount specified for these subsidy payments is based on the payment structure for foster family care. The amendments reflect the new provisions that base foster family difficulty of care payments on evaluation of a child's needs using Form 470-4401. Special payment provisions for children leaving group care or "treatment" foster family care are deleted. Payments for guardianship subsidy are limited to the level 2 maximum, plus a sibling allowance, if applicable.

These amendments do not provide for waivers in specified situations. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

The Council on Human Services adopted these amendments on December 13, 2006.

The Department finds that these amendments confer a benefit on families currently receiving foster care difficulty of care payments by increasing payment rates to match payment levels under the new system and by ensuring that those rates remain in place for the duration of the placement. The amendments confer a benefit on adoptive families and guardians who will receive subsidies by allowing the maximum payments to be set using the new system, which has an additional level of special-needs payment. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of these amendments is waived.

These amendments are intended to implement Iowa Code section 234.6.

These amendments became effective January 1, 2007, at which time the previously Adopted and Filed Emergency amendments were rescinded.

The following amendments are adopted.

ITEM 1. Amend rule **441—156.1(234)** as follows:

Amend the definition of "group care maintenance" as follows:

"Group care maintenance" means food, clothing, shelter, school supplies, personal incidentals, daily care ~~and~~, *general parenting, discipline, and* supervision of children to ensure their well-being and safety, and administration of maintenance items provided in a group care facility.

Adopt the following **new** definition of "child welfare services" in alphabetical order:

"Child welfare services" means age-appropriate activities to maintain a child's connection to the child's family and community, to promote reunification or other permanent placement, and to facilitate a child's transition to adulthood.

ITEM 2. Amend subrule **156.6(4)** by rescinding paragraphs **"a," "d," "e," "f,"** and **"h"** and adopting **new** paragraphs **"a," "d," "e,"** and **"f"** in lieu thereof as follows:

a. For placements made before January 1, 2007, when foster parents provide care to a special needs child, the foster family shall be paid the basic maintenance rate plus $5 per day for extra expenses associated with the child's special needs. This rate shall continue for the duration of the placement.

d. For placements made before January 1, 2007, when a treatment foster family provides care to a child receiving behavioral management services for children in therapeutic foster care pursuant to 441—subrule 185.62(3), the foster family shall be paid the basic maintenance rate plus $15 per day. This rate shall continue for the duration of the placement.

e. For placements made before January 1, 2007, when a service area manager determines that a foster family is providing care comparable to behavioral management services for children in therapeutic foster care pursuant to 441—subrule 185.62(3), except that the placement is supervised by the department and the child's treatment plan is supervised by a physician, mental health professional, or mental retardation professional, the foster family shall be paid the basic maintenance rate plus $15 per day. Foster families receiving this difficulty of care payment shall meet the requirements as found in 441—paragraph 185.10(8)"b." This rate shall continue for the duration of the placement.

f. For placements made on or after January 1, 2007, the supervisor may approve an additional maintenance payment above the basic rate in subrule 156.6(1) to meet the child's special needs as identified by the child's score on Form 470-4401, Foster Child Behavioral Assessment. The placement worker shall complete Form 470-4401 within 30 days of the child's initial entry into foster care.

(1) Additional maintenance payments made under this paragraph shall begin no earlier than the first day of the month following the month in which Form 470-4401 is completed and shall be awarded as follows:

1. Behavioral needs rated at level 1 qualify for a payment of $5 per day.
2. Behavioral needs rated at level 2 qualify for a payment of $10 per day.
3. Behavioral needs rated at level 3 qualify for a payment of $15 per day.

(2) The department shall review the child's need for this difficulty of care maintenance payment using Form 470-4401:

1. Whenever the child's behavior changes significantly;
2. When the child's placement changes;
3. After termination of parental rights, in preparation for negotiating an adoption subsidy or presubsidy payment; and
4. Before a court hearing on guardianship subsidy.

ITEM 3. Rescind and reserve subrule **156.7(3)**.

ITEM 4. Amend subrule 156.8(7) as follows:

Amend the introductory paragraph as follows:

156.8(7) Respite care. The service area manager may authorize respite for a child in family foster care for up to 24 days per calendar year per placement. Respite shall be provided by a licensed foster family. The payment rate to the respite foster family shall be ~~established as follows:~~ *the rate authorized under rule 441—156.6(234) to meet the needs of the child, with the exception of paragraphs 156.6(4)"b" and "c."*

Rescind paragraphs **"a," "b,"** and **"c."**

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 5. Amend rule 441—156.9(234) as follows:

Amend subrule 156.9(1) as follows:

156.9(1) In-state reimbursement. ~~Public~~ *For the period from November 1, 2006, through June 30, 2007, public* and private foster group care facilities licensed or approved in the state of Iowa shall be paid for group care maintenance and *child welfare* services in accordance with the rate-setting methodology ~~in rules 441—185.83(234) and 441—185.101(234) to 441—185.108(234)~~ *in this subrule*.

a. A provider of group care services shall maintain at least the minimum staff-to-child ratio during prime programming time as established in the contract. Staff shall meet minimum qualifications as established in 441—Chapters 114 and 115. The actual number and qualifications of the staff will vary depending on the needs of the children.

b. Additional payment for group care maintenance may be authorized if a facility provides care for a mother and her young child according to subrule 156.9(4).

c. Reimbursement rates shall be adjusted based on the provider's rate in effect on October 31, 2006, to reflect an estimate that group care providers will provide an average of one hour per day of group remedial services and one hour per week of individual remedial services. The reimbursement rate shall be calculated as follows:

(1) Step 1. Annualize the provider's combined daily reimbursement rate for maintenance and service in effect on October 31, 2006, by multiplying that combined rate by 365 days.

(2) Step 2. Annualize the provider's remedial services reimbursement rate for one hour per day of remedial services code 96153 (health and behavioral interventions - group), as established by the Iowa Medicaid enterprise, by multiplying that rate by 365 days.

(3) Step 3. Annualize the provider's remedial services reimbursement rate for one hour per week of remedial services code 96152 (health and behavioral interventions - individual), as established by the Iowa Medicaid enterprise, by multiplying that rate by 52 weeks.

(4) Step 4. Add the amounts determined in Steps 2 and 3.

(5) Step 5. Subtract the amount determined in Step 4 from the amount determined in Step 1.

(6) Step 6. Divide the amount determined in Step 5 by 365 to compute the new combined maintenance and child welfare service per diem rate.

(7) Step 7. Determine the maintenance portion of the per diem rate by multiplying the new combined per diem rate determined in Step 6 by 85.62 percent.

(8) Step 8. Determine the child welfare service portion of the per diem rate by multiplying the new combined per diem rate determined in Step 6 by 14.38 percent.

EXAMPLE: Provider A has the following rates as of October 31, 2006:

- *A combined daily maintenance and service rate of $121.45;*
- *A Medicaid rate for service code 96153 of $5.10 per 15 minutes, or $20.40 per hour;*
- *A Medicaid rate for service code 96152 of $19.92 per 15 minutes, or $79.68 per hour.*

Step 1. $121.45 × 365 days = $44,329.25
Step 2. $20.40 × 365 days = $7,446.00
Step 3. $79.68 × 52 weeks = $4,143.36
Step 4. $7,446.00 + $4,143.36 = $11,589.36
Step 5. $44,329.25 − $11,589.36 = $32,739.89
Step 6. $32,739.89 ÷ 365 days = $89.70
Step 7. $89.70 × 0.8562 = $76.80 maintenance rate
Step 8. $89.70 × 0.1438 = $12.90 child welfare service rate

Provider A's rates are $76.80 for maintenance and $12.90 for child welfare services.

d. If the Iowa Medicaid enterprise has not made a determination by October 31, 2006, on the need for remedial services for a child who is in group care placement as of that date, the department service area manager may approve a payment from state funds for the estimated daily reimbursement rate for remedial services that was used in the calculation of the provider's reimbursement rate under paragraph 156.9(1)"c." The service area manager shall document the reason for the delay in the decision on the child's need for remedial services.

(1) The service area manager may approve such payment only until the time that the Iowa Medicaid enterprise is anticipated to issue the decision regarding the child's need for remedial services. The service area manager shall not authorize payment from state funds if the Iowa Medicaid enterprise has determined that the child does not need remedial services.

(2) The payment that the service area manager may authorize shall be based on a reimbursement rate calculated as follows:

Step 1. Annualize the provider's reimbursement rate for one hour per day of remedial services code 96153 (health and behavioral interventions - group), as established by the Iowa Medicaid enterprise, by multiplying that rate by 365 days.

Step 2. Annualize the provider's remedial services reimbursement rate for one hour per week of remedial services code 96152 (health and behavioral interventions - individual), as established by the Iowa Medicaid enterprise, by multiplying that rate by 52 weeks.

Step 3. Add the amounts determined in Steps 1 and 2.

Step 4. Determine the provider's estimated daily rate for reimbursement of remedial services by dividing the amount in Step 3 by 365 days.

EXAMPLE: Provider B has the following rates as of October 31, 2006:

- *A Medicaid rate for service code 96153 of $5.10 per 15 minutes, or $20.40 per hour;*
- *A Medicaid rate for service code 96152 of $19.92 per 15 minutes, or $79.68 per hour.*

Step 1. $20.40 × 365 days = $7,446.00
Step 2. $79.68 × 52 weeks = $4,143.36
Step 3. $7,446.00 + $4,143.36 = $11,589.36
Step 4. $11,589.36 ÷ 365 days = $31.75 estimated daily rate for remedial services

Amend subrule 156.9(2), introductory paragraph, as follows:

156.9(2) Out-of-state group care payment rate. The payment rate for maintenance and ~~treatment~~ *child welfare* services provided by public or private agency group care licensed or approved in another state shall be established using the *same* rate-setting methodology *as that* in ~~rules 441—185.83(234) and 441—185.101(234) to 441—185.108(234)~~ *subrule 156.9(1)*, unless the director determines that appropriate care is not available within the state pursuant to the following criteria and procedures.

ITEM 6. Amend subrule 156.10(1), introductory paragraph, as follows:

156.10(1) Group care facilities. The department shall provide payment for group care maintenance *and child welfare services* according to the following policies.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 7. Amend rule 441—156.19(237) as follows:

441—156.19(237) Rate of payment for care in a residential care facility. When a child is receiving group care maintenance and ~~treatment~~ *child welfare* services in a licensed residential care facility and is not eligible for supplemental security income or state supplementary assistance, the department will pay for the group care maintenance and ~~treatment~~ *child welfare* services in accordance with ~~rules 441—185.81(234) and 441—185.101(234) to 441—185.108(234)~~ *subrule 156.9(1)*. When a child receives group care maintenance and ~~treatment~~ *child welfare* services in a licensed residential care facility and is eligible for supplemental security income or state supplementary assistance, the department will pay for ~~group care treatment~~ *child welfare* services in accordance with ~~rules 441—185.81(234) to 441—185.108(234)~~ *subrule 156.9(1)*.

This rule is intended to implement Iowa Code section 237.1(3)"e."

ITEM 8. Amend rule 441—156.20(234) as follows:

Amend subrule **156.20(1)**, paragraph **"a,"** subparagraph **(2)**, as follows:

(2) Limitations. Department payment for group care shall be limited to placements which have been authorized by the ~~review organization pursuant to rule 441—185.4(234)~~ *department* and which conform to the service area group care plan developed pursuant to rule 441—202.17(232). Payment for an out-of-state group care placement shall be limited to placements approved pursuant to 441—subrule 202.8(2) ~~and where the facility meets provider certification according to rule 441—185.10(234)~~.

Amend subrule 156.20(2) as follows:

156.20(2) Provider eligibility for payment. Except for payments for foster parents or youth in supervised apartment living, payment shall be limited to providers with a purchase of service contract in force. Providers of family foster care treatment services and *supervision and providers of* group care ~~treatment~~ services shall meet certification requirements in rule 441—185.9(234) or 441—185.10(234) and *shall* have a purchase of rehabilitative treatment and supportive services contract under 441—Chapter 152 in force.

ITEM 9. Amend rule 441—182.2(234) as follows:

Amend subrule **182.2(1)**, paragraph **"a,"** by adopting **new** subparagraphs **(6)** and **(7)** as follows:

(6) Monitoring of a child's or parent's behavior during sibling or parent-child visits; and

(7) Monitoring of a child's behavior during transportation to and from juvenile court hearings, to and from sibling visits, or to and from parent-child visits, if specifically requested by the child's worker on Form 470-3055, Referral of Client for Rehabilitative Treatment and Supportive Services, and approved by the service area manager or designee.

Amend subrule **182.2(5)** by adopting **new** paragraph **"c"** as follows:

c. Unless a similar rehabilitative service has been authorized under rule 441—185.3(234), services may include:

(1) Performing a psychosocial evaluation of the family's strengths and needs as they relate to the child's safety, permanency and well-being; and

(2) Identifying resources available to promote and support the family's ability to maintain the child's safety, permanency and well-being.

ITEM 10. Amend rule 441—182.4(234) by adopting the following **new** subrule:

182.4(7) Time limits for rehabilitative and nonrehabilitative treatment services. Authorization of rehabilitative and nonrehabilitative treatment services shall be limited as follows:

a. The Iowa Foundation for Medical Care is responsible for issuing authorizations for rehabilitative treatment services for children who are eligible for Medicaid in response to requests received on or before December 31, 2006.

(1) The period of authorization may extend up to six months beyond December 31, 2006, but no new authorization or reauthorization may be issued after December 31, 2006.

(2) Rehabilitative treatment services shall not be authorized for any child who is approved by the Iowa Medicaid enterprise for remedial services under rule 441—78.12(249A).

b. The service area manager or designee is responsible for issuing authorizations for rehabilitative treatment services for children who are not eligible for Medicaid in response to requests received on or before December 31, 2006. The period of authorization may extend up to six months beyond December 31, 2006, but no new authorization or reauthorization may be issued after December 31, 2006.

c. The service area manager or designee is responsible for issuing authorizations for nonrehabilitative treatment services in response to requests received on or before December 31, 2006. The period of authorization may extend up to six months beyond December 31, 2006, but no new authorization or reauthorization may be issued after December 31, 2006.

ITEM 11. Amend rule 441—185.2(234) by adopting the following **new** subrule:

185.2(6) Time limit on authorization. The Iowa Foundation for Medical Care is responsible for issuing authorizations for rehabilitative treatment services for children who are eligible for Medicaid in response to requests received on or before December 31, 2006.

ITEM 12. Rescind and reserve **441—Chapter 185**, **Division IV**.

ITEM 13. Amend subrule 201.5(9) as follows:

201.5(9) The maximum monthly maintenance payment for a child in subsidized adoption shall be made pursuant to the foster family care maintenance rates according to the age and special needs of the child found at 441—subrule 156.6(1) and 441—paragraph ~~156.6(4)"a."~~ *156.6(4)"f."* ~~If, at the time of placement, the child was receiving special needs payment found at 441—paragraph 156.6(4)"d" or was in group care and would have been eligible for the payment if the child had been in foster care, the child shall be eligible for this payment in a subsidized adoptive placement.~~

ITEM 14. Amend subrule 202.2(2) as follows:

202.2(2) The need for foster care placement and social and other related services including, but not limited to, medical, psychiatric, psychological, and educational services shall be determined by an assessment of the child and family to determine their needs and appropriateness of services. Assessments include the educational, physical, psychological, social, family living, and recreational needs of the child and the family's ability to meet those needs. The assessment is a continual process to identify needed changes in service or placement for the child. ~~The need for treatment services shall be determined by the review organization pursuant to rule 441—185.2(234).~~

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 15. Amend paragraph **202.4(5)"f"** as follows:

f. The treatment needs of the child ~~as determined by the review organization pursuant to rule 441—185.2(234)~~.

ITEM 16. Amend paragraph **204.4(2)"a"** as follows:

Amend subparagraph **(1)** as follows:

(1) The rate for the guardianship subsidy shall not exceed the state's current daily basic foster care rate plus any daily *level 1 or 2* special needs allowance or sibling allowance for which the child is eligible, as found at 441—subrule 156.6(1) and 441—~~paragraph 156.6(4)"a."~~ *paragraphs 156.6(4)"b" and "f."*

Rescind and reserve subparagraph **(2)**.

[Filed Emergency After Notice 12/13/06, effective 1/1/07]
[Published 1/3/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/3/07.

ARC 5635B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code section 427.1(19), the Environmental Protection Commission hereby amends Chapter 11, "Tax Certification of Pollution Control or Recycling Property," Iowa Administrative Code.

These amendments reflect the expansion of the property tax exemption to include property used to process waste glass products. The amendments include examples of recycling property typically considered eligible and remove an out-of-date reference to the Department of Water, Air and Waste Management.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 11, 2006, as **ARC 5450B**. A public hearing was held on November 8, 2006. No comments were received. No changes have been made to the Notice.

These amendments are intended to implement Iowa Code section 427.1(19).

These amendments will become effective February 7, 2007.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [11.6(1), 11.6(3)] is being omitted. These amendments are identical to those published under Notice as **ARC 5450B**, IAB 10/11/06.

[Filed 12/12/06, effective 2/7/07]
[Published 1/3/07]

[For replacement pages for IAC, see IAC Supplement 1/3/07.]

ARC 5637B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code section 455B.172, the Environmental Protection Commission hereby amends Chapter 43, "Water Supplies—Design and Operation," Iowa Administrative Code.

This chapter pertains to the public water supply program's requirements for design and operation. Construction permits are required of all systems for any construction, installation, or modification of any project that affects a public water supply system. Construction permitting fees are assessed to the public water supplies depending upon the project type, with a cap on the fees for a specific project currently in rule. These amendments institute a cap on the fees collected from a public water supply system owner during a calendar year. In addition, the fee schedule for a time extension request is corrected.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 11, 2006, as **ARC 5449B**. A public hearing was held on November 1, 2006. No comments were received during the hearing or the public comment period, which ended November 3, 2006. The only changes made to the Notice were grammatical changes.

These amendments were adopted by the Commission on December 5, 2006.

These amendments are intended to implement Iowa Code section 17A.3(1)"b," chapter 455B, division III, part 2, and sections 455B.105 and 455B.173.

These amendments shall become effective February 7, 2007.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [43.3(3)"c"(3) and (4)] is being omitted. With the exception of the grammatical changes referred to above, these amendments are identical to those published under Notice as **ARC 5449B**, IAB 10/11/06.

[Filed 12/12/06, effective 2/7/07]
[Published 1/3/07]

[For replacement pages for IAC, see IAC Supplement 1/3/07.]

ARC 5634B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code chapter 455B, division IV, part 1, and section 455D.6(6), the Environmental Protection Commission hereby rescinds Chapter 118, "Discarded Appliance Demanufacturing," Iowa Administrative Code, and adopts new Chapter 118 with the same title.

This new chapter will improve the Department's ability to ensure that hazardous materials from appliances are being handled in an environmentally sound manner by revising the record-keeping and annual reporting requirements, easing storage time limits on PCB-containing articles that are disposed of through a regional collection center, and incorporating federal requirements. The chapter has also been reformatted to make it consistent with other chapters and to improve readability.

Notice of Intended Action was published in the September 27, 2006, Iowa Administrative Bulletin as **ARC 5387B**.

A public hearing was held on October 17, 2006. In response to the comments received, the following changes from the Notice were made:

- Paragraph 118.9(6)"h" was revised to specify that asbestos insulation found within the appliance as well as on refrigerant lines must be removed.
- Paragraph 118.11(5)"d" was revised to clarify that a certificate of disposal must be obtained within 30 days of the actual disposal of PCB-containing items at an incinerator or chemical landfill, rather than 30 days from the date when the PCB-containing items are picked up by the transporter.
- Paragraph 118.13(2)"g" was changed to require that the total amount of refrigerant removed from appliances be reported rather than the amount of each type of refrigerant removed.

The weight specified in pounds in subrule 118.10(5) was corrected. In addition, nonsubstantive technical and grammatical changes were also made for clarity.

These rules will become effective February 7, 2007.

These rules are intended to implement Iowa Code sections 455B.304 and 455D.6(6).

The following amendment is adopted.

Rescind 567—Chapter 118 and adopt the following **new** chapter in lieu thereof:

CHAPTER 118
DISCARDED APPLIANCE DEMANUFACTURING

567—118.1(455B,455D) Purpose. The purpose of this chapter is to implement Iowa Code chapter 455B, division IV, part 1, and section 455D.6(6) to ensure the proper removal and disposal of electrical parts containing polychlorinated biphenyls (PCBs), components containing mercury, and refrigerants (e.g., CFCs and HCFCs) from discarded appliances.

567—118.2(455B,455D) Applicability and compliance.

118.2(1) All discarded appliances must be demanufactured before being disposed of or recycled. This chapter does not apply to the service, repair, reuse or rebuilding of appliances or components for their original purpose. These rules do not apply to the removal of capacitors, refrigerants or components containing mercury during the maintenance or service of equipment containing such items.

118.2(2) A person must obtain an appliance demanufacturing permit (ADP) from the department of natural resources (DNR) before conducting any demanufacturing activities.

118.2(3) Any person engaged in demanufacturing must be in compliance with all federal and state laws relating to the management and disposition of all hazardous wastes, hazardous materials, universal wastes, PCBs and refrigerants.

567—118.3(455B,455D) Definitions.

"Appliances" means household and commercial devices such as refrigerators, freezers, kitchen ranges, air-conditioning units, dehumidifiers, gas water heaters, furnaces, clothes washers, clothes dryers, dishwashers, microwave ovens and commercial coolers with components containing mercury, refrigerants, or PCB-containing capacitors.

"Ballast" means an electrical device containing capacitors for the purpose of triggering high-level electrical components. A ballast provides electrical balance within the high-level electrical component circuitry.

"Capacitor" means a device for accumulating and holding a charge of electricity that consists of conducting surfaces separated by a dielectric fluid.

"CFC" or "CFCs" means chlorofluorocarbons, including any of several compounds used as refrigerants.

"CFR" means Code of Federal Regulations.

"Demanufacturing" means the removal of components, including but not limited to PCB-containing capacitors, ballasts, mercury-containing components, fluorescent tubes, and refrigerants, from discarded appliances.

"Discarded" means no longer to be used for the original intended purpose.

"DOT-approved container" means those containers approved by the U.S. Department of Transportation, the agency responsible for shipping regulations for hazardous materials in the United States.

"Facility" means any landfill, transfer station, material recovery facility, salvage business, appliance service or repair shop, appliance demanufacturer, shredder operation or other party which may accept appliances for demanufacturing. A demanufacturing facility may occupy a portion of a material recovery facility, salvage business, landfill, transfer station or other site.

"Fixed facility" means a permitted appliance demanufacturer operating at a permanent location.

"Fluff" means the residual waste from the shredding operation after metals recovery.

"Hazardous condition" means any situation involving an actual, imminent or probable spillage, leakage, or release of a hazardous substance onto the land, into a water of the state or into the atmosphere which, because of the quantity, strength and toxicity of the hazardous substance, its mobility in the environment and its persistence, creates an immediate or potential danger to the public health or safety or to the environment.

"HCFC" or "HCFCs" means hydrochlorofluorocarbons, including any of several compounds used as refrigerants.

"Mercury-containing components" means devices containing mercury. Examples include, but are not limited to, thermostats, thermocouples, mercury switches and fluorescent tubes.

"Mobile operation" means a permitted appliance demanufacturer that has equipment capable of operating in an area away from a fixed, permitted location.

"PCB" or "PCBs" means polychlorinated biphenyl, which is a chemical substance that is limited to the biphenyl molecule that has been chlorinated to varying degrees, or any combination of substances that contain polychlorinated biphenyl.

"Point of demanufacturing" means the actual location of demanufacturing for fixed facilities and mobile operations.

"Reclaim" means to reprocess refrigerant to an EPA ARI-700-88 standard.

"Recovery" means to remove all refrigerants to EPA standards.

"Small capacitor" means a capacitor which contains less than 1.36 kg (3 lbs) of dielectric fluid. The following assumptions may be used if the actual weight of the dielectric fluid is unknown. A capacitor whose total volume is less than 1,639 cubic centimeters (100 cubic inches) may be considered to contain less than 1.36 kg (3 lbs) of dielectric fluid, and a capacitor whose volume is more than 3,278 cubic centimeters (200 cubic inches) must be considered to contain more than 1.36 kg (3 lbs) of dielectric fluid. A capacitor whose volume is between 1,639 and 3,278 cubic centimeters may be considered to contain less than 1.36 kg (3 lbs) of dielectric fluid if the total weight of the capacitor is less than 4.08 kg (9 lbs).

567—118.4(455B,455D) Storage and handling of appliances prior to demanufacturing.

118.4(1) Any person collecting and storing discarded appliances must store the appliances so as to prevent electrical capacitors, refrigerant lines and compressors, and mercury-containing components from being damaged and allowing a release into the environment.

118.4(2) No method of handling discarded appliances may be used which in any way damages, cuts or breaks refrigerant lines or crushes compressors, capacitors, or mercury-containing components, or may cause a release of refrigerant, PCBs or mercury into the environment.

118.4(3) No more than 1,000 discarded appliances may be stored at a location prior to demanufacturing.

118.4(4) Discarded appliances may not be stored for more than 270 days before being demanufactured.

567—118.5(455B,455D) Appliance demanufacturing permits.

118.5(1) Permit required. A person must obtain an appliance demanufacturing permit (ADP) from the department before conducting any demanufacturing activities.

118.5(2) Types of permits.

a. A person may request a permit that excludes appliances that contain a particular type of material (e.g., refrigerants, sodium chromate, PCBs, or mercury switches). Persons may not demanufacture or place their unique mark on an appliance that once contained a material that is excluded from their permit. An appliance demanufacturing facility must clearly post the types of appliances the facility does not accept.

b. Permits may be issued for both fixed facilities and mobile operations.

118.5(3) Transfer of title and permit. If title to an appliance demanufacturing facility is transferred to another party, the department shall transfer the permit within 60 days if the department determines that the following requirements have been met:

a. The title transferee has applied in writing to the department within 30 days of the transfer of title to request a transfer of the permit.

b. The permitted facility and title transferee are in compliance with Iowa Code chapters 455B and 455D, this chapter, and the conditions of the permit.

118.5(4) Permit conditions. A permit may be issued with conditions, specified in writing by the department, that are necessary to ensure the appliance demanufacturing facility can be operated in a safe and effective manner and in compliance with Iowa Code chapters 455B and 455D and this chapter.

118.5(5) Inspection of site and operation. The department shall inspect facilities prior to issuing an appliance demanufacturing permit. The permit will not be issued until the facility is in compliance with these rules. Appliance demanufacturing facilities may be inspected by the department throughout the permit period and prior to permit renewal.

118.5(6) Duration of permits. Appliance demanufacturing permits shall be issued and may be renewed for a five-year term.

118.5(7) Request for permit renewal. Applications for permit renewal must address any changes to the information previously submitted pursuant to subrule 118.5(1). If there has been no change in an item, the applicant shall so indicate on the application form. The renewal application, Form 542-8005, must be submitted to the solid waste section of the DNR central office in Des Moines a minimum of 60 days before permit expiration.

118.5(8) Request for permit modification. An application for permit amendment must be submitted and the amendment must be issued by the department before significant changes may be made by the permit holder to the process or facility. The applicant shall provide a revised plan of operations, a contingency plan, and any other documentation required in rule 118.6(455B,455D) that will change.

118.5(9) Factors in permit issuance decisions. The department may request that additional information be submitted for review to make a permit issuance decision. The department may review and inspect the facility, its agents and operators, and compliance history. The department may review whether a good-faith effort to maintain compliance and protect human health and the environment is being made and whether a compliance schedule is being followed. The department may issue a permit on a trial basis.

567—118.6(455B,455D) Appliance demanufacturing permit application requirements. The permit application for appliance demanufacturing must contain the following information to be submitted on Form 542-8005.

1. Facility name.
2. Office address.
3. Location of demanufacturing facility if different from office address.
4. Contact person or official responsible for the operation of the facility.
5. Type, source and expected number or weight of appliances to be handled per year.
6. Schematic site plans of a fixed facility, including the schematic floor plans of any buildings showing where activities will take place and where waste is stored.
7. For mobile operations: schematic plans, or a description and photographs, of the mobile van or trailer.
8. A copy of the EPA Refrigerant Recovery or Recycling Device Acquisition Certification Form 2060-0256.
9. Operation plan: a detailed summary of the activities that will be performed on each type of appliance considered for demanufacturing. This summary must include step-by-step activities of the demanufacturing process.
10. A contingency plan detailing specific procedures to be used in case of equipment breakdown or fire, including methods to be used to remove or dispose of accumulated waste.
11. A copy of the Authorization to Discharge **(**Stormwater) Permit number, where applicable.
12. A copy of EPA Notification of PCB Activity Form 7710-53 and a return response from EPA. Facilities storing PCB-containing articles longer than 30 days must register with EPA. This form may be obtained by contacting the Fibers and Organics Branch, Office of Pollution Prevention and Toxics, United States Environmental Protection Agency, Ariel Rios Building (7404), 1200 Pennsylvania Avenue NW, Washington, DC 20460.
13. Documentation showing compliance with rule 118.8(455B,455D).
14. A copy of the unique marking system to be applied to each discarded appliance after demanufacturing.
15. Documentation that a permanent facility meets local zoning requirements.

567—118.7(455B,455D) Fixed facilities and mobile operations. The following removal and disposal requirements must be met by both fixed facilities and mobile operations.

118.7(1) Demanufacturing of appliances must take place on an impervious floor (including but not limited to concrete, ceramic tile, or metal, but not wood). Any spills must be contained and picked up with proper equipment and procedures and be disposed of properly.

118.7(2) The point of demanufacturing must be located at least 50 feet from a well and any water of the state.

118.7(3) The facility must be located above the 100-year floodwater elevation.

118.7(4) A permanent facility must meet local zoning requirements.

118.7(5) An applicant must establish a unique marking system, to be submitted with the permit application for department approval, signifying that all refrigerants, PCB-containing articles, and mercury-containing components have been removed. The unique marking system must be a minimum of nine inches by nine inches and must be applied to the appliances after demanufacturing.

567—118.8(455B,455D) Training. Beginning January 1, 2003, at least one owner or employee of an appliance demanufacturing facility must have a training certificate from a department-approved training course. A person who has

completed the department-approved training course must be on site at all times when discarded appliances are being demanufactured. The training will, at a minimum, cover the following topics.

1. State and federal regulations for the removal, storage, transportation, and disposal of refrigerant, PCB-containing articles, mercury-containing components, and asbestos from appliances.
2. Record-keeping requirements.
3. Safety precautions for handling appliances and hazardous materials.
4. Spill prevention and cleanup procedures appropriate for appliance demanufacturing.
5. The proper methods of loading and unloading discarded appliances.
6. General demanufacturing procedures.

567—118.9(455B,455D) Refrigerant removal requirements.

118.9(1) All owners of refrigerant recovery and recycling equipment must provide certification to EPA that they have acquired and are using EPA-approved equipment.

118.9(2) Refrigerant in appliances must be recovered to EPA standards using equipment meeting EPA requirements (40 CFR 82.162). Refrigerant may be removed prior to delivery to the appliance demanufacturer if it is removed by an appliance service or repair facility employee certified for the removal of refrigerant.

118.9(3) The removal of refrigerant from refrigeration appliances must take place in an area where the temperature of the surrounding air and of the appliance being demanufactured is 45 degrees Fahrenheit or greater.

118.9(4) Facilities that are not EPA-certified refrigerant reclaimers must ship recovered refrigerant to an EPA-certified reclamation facility or properly dispose of the refrigerant at an EPA-permitted facility. Reclamation may take place on site only if the appliance demanufacturing facility is certified as a reclaimer by the EPA. Any refrigerant that cannot be reclaimed or recycled must be properly disposed of by incineration or other acceptable means.

118.9(5) Compressor oil.

a. Compressor oil from refrigeration unit compressors may be removed during the demanufacturing process, and any oil removed must be stored in accordance with rule 567—119.5(455D,455B).

b. Compressor oil is not hazardous and may be burned in used oil-fired space heaters, provided the heaters have a capacity of 0.5 BTUs (British thermal units) per hour or more.

c. Compressor oil may be sold to a marketer of used oil.

118.9(6) Ammonia gas-operated refrigerators and air conditioners.

a. Ammonia gas must be vented into water.

b. Sodium chromate must be removed from refrigeration equipment containing sodium chromate.

c. Sodium chromate liquid is a hazardous waste and must be disposed of at an EPA-permitted facility.

d. Removal of sodium chromate liquid must take place on an impervious surface. In case of a spill, the spilled liquid and the material used as absorbent must be handled as a hazardous waste and disposed of as a hazardous waste.

e. Sodium chromate must be stored in a DOT-approved container that shows no sign of damage. The container must be labeled with a proper EPA-approved chromium label stating "chromium" or "hazardous waste" as required by 40 CFR 262.32 and 49 CFR 172.304 in both English and the predominant language of any non-English-reading workers.

f. Prior to shipment, sodium chromate must be packaged to prevent leakage, and all containers must be sealed.

g. A person generating sodium chromate waste must maintain records to determine if the person is a conditionally exempt small-quantity generator, small-quantity generator, or large-quantity generator of hazardous waste.

h. Asbestos insulation found within the appliance or on refrigerant lines must be removed. Asbestos must be handled in a manner that complies with Occupational Safety and Health Administration (OSHA) regulations.

i. Asbestos must be moistened and double bagged, in accordance with 567—Chapter 109, prior to disposal at a landfill approved for asbestos disposal for the person's solid waste comprehensive planning area. A person who needs to dispose of asbestos must contact the landfill and make arrangements for the disposal and any additional packaging and handling procedures.

567—118.10(455B,455D) Mercury-containing component removal and disposal requirements.

118.10(1) All components containing mercury shall be removed from appliances. Precautions shall be taken to prevent breakage of the mercury-containing components and the release of mercury.

118.10(2) All mercury-containing component storage containers must be labeled with the proper EPA-approved mercury label stating "Universal Waste—Mercury Containing Equipment," "Waste Mercury-Containing Equipment" or "Used Mercury-Containing Equipment" in both English and the predominant language of any non-English-reading workers.

118.10(3) The date when the first mercury-containing component was placed in the container shall be affixed to the container.

118.10(4) Mercury-containing components may be stored for no longer than one year.

118.10(5) Accumulation of mercury-containing components shall not exceed 5,000 kg (11,025 lbs) at any time.

118.10(6) All mercury containers must be sealed prior to shipment.

118.10(7) All components containing mercury must be disposed of at an EPA-approved mercury recycling/recovery facility.

118.10(8) Fluorescent tubes, lamps, bulbs, and similar items must be placed in a container and packaged to prevent breakage for shipment to an EPA-approved recycler or must be processed in a manner that complies with state and federal regulations.

118.10(9) All mercury-containing components must be managed in accordance with 40 CFR 273 and all state and federal regulations.

567—118.11(455B,455D) Capacitor removal requirements.

118.11(1) All capacitors must be removed from discarded appliances unless the appliance manufacturer certifies in writing that no PCBs were used in the manufacture of the appliance.

118.11(2) Capacitors that meet one or more of the following criteria may be disposed of or recycled as solid waste. The capacitor:

a. Is proven to be free of PCBs by an approved laboratory.

b. Is imprinted by the manufacturer with the words "No PCBs" on the body of the capacitor.

c. Is certified in writing by the manufacturer of the capacitor not to contain PCBs.

d. Does not contain dielectric fluid.

118.11(3) All capacitors not meeting the criteria in subrule 118.11(2) must be disposed of in accordance with subrule 118.11(5).

118.11(4) Containers for storage and disposal of PCB-containing items. PCB-containing items must be stored and transported according to the Toxic Substances Control Act (TSCA) (40 CFR 761) and disposed of at a TSCA-permitted disposal facility. Facilities used for the storage of PCB-containing items designated for disposal must meet the following storage requirements:

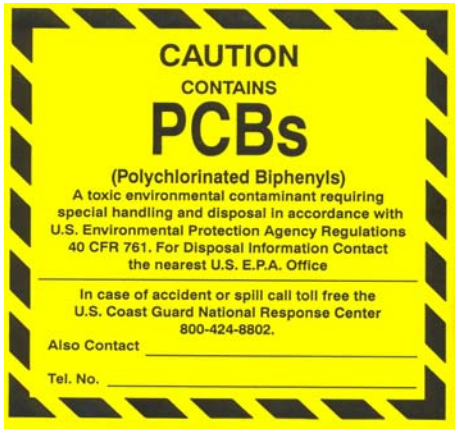
a. Facilities shall register with the US EPA and receive an EPA identification number.

b. PCB-containing items must be stored in a manner that provides adequate protection from the elements and adequate secondary containment. This storage must take place on an impervious material above the 100-year floodwater elevation.

c. The point of demanufacturing must be located above the 100-year floodwater elevation.

d. All capacitors containing or suspected of containing PCBs must be placed in a DOT-approved container that shows no signs of damage. The bottom of the container must be filled to a depth of two inches with absorbent material such as sand, oil-dry, or kitty litter.

e. All DOT-approved containers must be affixed with the large PCB mark (M_L) as described in 40 CFR 761.45 and shown below.



f. The date when the first PCB-containing item was placed in the container shall be placed on the container.

g. Nonleaking small PCB capacitors may be stored for up to 30 days from the date of removal in an area that does not comply with the requirements in 118.11(4)"a" to "f" provided a notation is placed on the PCB capacitor indicating the date the item was removed from the appliance.

h. PCB-containing items may be stored for no more than 270 days. The storage area must be labeled with the PCB M_L mark. The storage area must be inspected every 30 days, and the inspection must be documented.

i. If a demanufacturer stores more than 45 kg (99.4 lbs) at any one time, the demanufacturer must maintain annual written records and the annual document log as required by 40 CFR 761.180.

118.11(5) Transportation and disposal.

a. Appliance demanufacturers may dispose of PCB capacitors by one of two means. If the facility is a conditionally exempt small quantity generator (CESQG), the demanufacturer may send the properly marked and dated container of capacitors to a regional collection center (RCC) permitted under 567—Chapter 123 for disposal. If the facility is not a CESQG, the capacitors must be manifested and shipped for disposal in accordance with 40 CFR 761.65.

b. Disposal through an RCC. Shipments from a CESQG to an RCC shall be considered equivalent to disposal as municipal solid waste for the purposes of 40 CFR 761.60(b)(2)(iii); capacitors may not be disposed of in a landfill. An RCC may accept PCB capacitors without having to provide a certificate of disposal. The RCC shall provide the appliance demanufacturer with a receipt specifying the name of the RCC, the appliance demanufacturer from which the capacitors were received, the weight or number of capacitors, and the date the capacitors were received. Copies of this document must be retained for three years at both locations. The date that capacitors are received shall be considered the date the capacitors are determined to be PCB-containing waste for the purposes of 40 CFR 761.65(a)(1). Capacitors may be consolidated in DOT-approved shipping containers for transport for disposal.

c. Disposal through EPA-approved facility for the disposal of PCB waste. The labeled and dated DOT-approved container must be transported by a transporter with a valid EPA ID number, using an EPA Uniform Hazardous Waste Manifest Form. All containers must be sealed prior to shipment. The demanufacturer has one year from the date the first PCB-containing item is placed in the container to properly dispose of the contents by incineration, recycling, or another approved method pursuant to 40 CFR 761.60(b) or 761.60(c). Disposal must be documented and the record kept by the demanufacturer for three years from the date the PCB-containing waste was accepted by the initial transporter.

d. PCB-containing items shall be properly disposed of within one year of removal from the appliance. The generator shall obtain a certificate of disposal within 30 days of the date that disposal of the PCB-containing items was completed at a PCB disposal facility. If a certificate of disposal is not obtained within 30 days, the EPA regional administrator must be notified pursuant to 40 CFR 761.218(d).

567—118.12(455B,455D) Spills.

118.12(1) Any spills from leaking or cracked capacitors must be handled by placing the capacitor and any contaminated rags, clothing, and soil into a container for shipment to an EPA-approved waste disposal facility. Spills of liquid PCBs which occur outside a DOT-approved container must be cleaned and the cleanup verified by sampling as described at 40 CFR 761.130. Detailed records of such cleanups and sampling must be maintained as described at 40 CFR 761.180.

118.12(2) Mercury spill kits (with a mercury absorbent in the kits) must be on hand and used in the event of a mercury spill. Any waste from the cleanup of a mercury spill must be disposed of as a hazardous waste.

118.12(3) In the event a spill results in a hazardous condition, the facility must notify the department of natural resources at (515)281-8694 and the local police department or sheriff's office of the affected county of the occurrence of a hazardous condition as soon as possible, but no later than six hours after the onset or discovery of a spill pursuant to 567—Chapter 131.

567—118.13(455B,455D) Record keeping and reporting.

118.13(1) Annual reports with the information required in subrule 118.13(2) are:

a. To be sent to the solid waste section of the DNR central office in Des Moines;

b. Due January 31 each year for the activities of the previous calendar year;

c. To be submitted on forms provided by the department, which may be submitted electronically when the electronic format is completed; and

d. To be retained by the permit holder for at least three years.

118.13(2) Annual reports shall contain the following information for the previous calendar year.

a. Number of appliances demanufactured in each of the following categories:

(1) Refrigerators and freezers.
(2) Commercial coolers.
(3) Air-conditioning units.
(4) Dehumidifiers.
(5) Gas water heaters.
(6) Furnaces.
(7) Clothes washers and clothes dryers.
(8) Dishwashers.
(9) Microwave ovens.
(10) Other items containing mercury, refrigerant or PCB-containing articles.

b. Number of mercury switches removed from appliances.

c. Number of mercury thermocouples removed from appliances.

d. Date the first item was placed in the mercury storage drum that is in use on December 31.

e. Number of fluorescent tubes removed from appliances.

f. Number of sodium chromate-containing appliances shipped to another demanufacturer.

g. Amount of refrigerant removed.

h. Number of PCB capacitors removed.

i. Number of PCB ballasts removed.

j. Date the first PCB-containing item was placed in the storage drum that is in use on December 31.

118.13(3) A permitted appliance demanufacturing facility shall retain the following records on site for a minimum of three years.

a. All hazardous waste manifests and bills of lading for shipments of refrigerant, mercury switches, PCB-containing materials and any hazardous waste.

b. Receipts for any sodium chromate-containing units that were sent to another facility for processing.

c. Documentation of destruction or receipt from a regional collection center for all PCB materials shipped.

d. Documentation of inspections of the PCB storage area as required by paragraph 118.11(4)"h."

e. Annual written records and annual document log if required by paragraph 118.11(4)"i."

f. Copy of the annual report as required in subrule 118.13(1).

567—118.14(455B,455D) Appliance demanufacturing facility closure requirements. An appliance demanufacturing facility shall submit to the department central office and department field office with jurisdiction over the appliance demanufacturing facility written notice of intent to permanently close the facility at least 90 days before closure. Closure shall not be official until the department field office has provided written certification of the completion of the following activities:

1. Removal of all appliances that have not been demanufactured.

2. Proper disposal of all refrigerant, PCBs, mercury and all hazardous materials.

3. Submission of an annual report covering January through the last disposal of hazardous materials, PCBs and refrigerant.

567—118.15(455B,455D) Shredding of appliances.

118.15(1) Facilities shredding demanufactured appliances shall sample the fluff from the shredding of demanufactured appliances at least quarterly and analyze the fluff according to Test Methods for Evaluation of Solid Waste, Physical-Chemical Methods SW 846, US EPA, Third Edition 1986, for the presence of PCBs, and according to the toxicity characteristic leaching procedure (TCLP) for heavy metals. The waste shall be sampled once a day for seven consecutive working days to make a composite sample. If the concentrations of heavy metals do not exceed concentrations listed in 40 CFR 261.24, the fluff may be landfilled in Iowa. Results must be retained on site for a minimum of three years and be submitted to the department within 30 days of the end of each quarter.

118.15(2) Fluff from the shredding of demanufactured appliances may be sampled and tested by the department at any time.

118.15(3) A person or facility engaged in demanufacturing in the state may not shred, crush, or bale any appliances that have not been demanufactured. A person or facility located in Iowa that does not engage in demanufacturing but accepts appliances from demanufacturers for recycling or disposal may shred, crush, or bale only appliances that have been demanufactured in accordance with federal regulations and the laws of the state from which the appliances are received.

These rules are intended to implement Iowa Code sections 455B.304 and 455D.6(6).

[Filed 12/12/06, effective 2/7/07]
[Published 1/3/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/3/07.

ARC 5647B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 75, "Conditions of Eligibility," Iowa Administrative Code.

These amendments create a new Medicaid coverage group called "Medicaid for independent young adults." The group will provide Medicaid benefits for youth who have "aged out" of the foster care program. The state has the option of providing Medicaid coverage for adolescents leaving foster care under amendments to Title XIX of the Social Security Act that were enacted as part of the Foster Care Independence Act of 1999. The Eighty-first General Assembly authorized this coverage in the Iowa Medicaid program through passage of 2006 Iowa Acts, chapter 1159, in conjunction with the Preparation for Adult Living Program.

To be eligible for this coverage, a youth must have been in state-paid foster care on the youth's eighteenth birthday and have income below 200 percent of the federal poverty level. The youth shall not be eligible for Medicaid benefits under any other coverage group and shall not be a "considered per-

son" on another Medicaid case. Household income will be examined only once a year. Coverage may extend until the youth reaches the age of 21.

These amendments were previously Adopted and Filed Emergency and published in the Iowa Administrative Bulletin on July 5, 2006, as **ARC 5219B**. Notice of Intended Action to solicit comments on that submission was published in the Iowa Administrative Bulletin on the same date as **ARC 5200B**. The Department received no comments on these amendments. These amendments are identical to those Adopted and Filed Emergency and published under Notice of Intended Action.

These amendments do not provide for waivers in specified situations. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

The Council on Human Services adopted these amendments December 13, 2006.

These amendments are intended to implement Iowa Code Supplement section 249A.3 as amended by 2006 Iowa Acts, chapter 1159, section 8.

These amendments shall become effective February 7, 2007, at which time the Adopted and Filed Emergency amendments are rescinded.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [75.1(42), 75.57(7)] is being omitted. These amendments are identical to those published under Notice as **ARC 5200B** and Adopted and Filed Emergency as **ARC 5219B**, IAB 7/5/06.

[Filed 12/13/06, effective 2/7/07]
[Published 1/3/07]

[For replacement pages for IAC, see IAC Supplement 1/3/07.]

ARC 5648B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 76, "Application and Investigation," Iowa Administrative Code.

This amendment revises subrule 76.12(7) to clarify Medicaid estate recovery policy. When a person under the age of 55 enters a nursing facility, an intermediate care facility for the mentally retarded, or a mental health institute, the Department makes a presumption that the person will not return home. When the person cannot return home, the person's remaining assets at the time of death will be subject to recovery to offset the costs of the person's medical assistance benefits, the same as for a person aged 55 or over. The rule contains provisions for rebutting this presumption and for no estate recovery if the person returns to the community in less than six months.

The amendment removes confusing and redundant language and updates organizational references and Iowa Code citations. The word "recipient" has been replaced with "member" to denote a person who has been determined eligible for medical assistance, to follow the terminology used by the Iowa Medicaid Enterprise.

Notice of Intended Action on this amendment was published in the Iowa Administrative Bulletin on August 2, 2006, as **ARC 5285B**. The Department received no comments on the Notice of Intended Action.

The Department has made the following changes to the Notice of Intended Action:

- A new paragraph "f" is added to describe procedures for initiating debt collection. Paragraph "f" reads as follows:

"f. Debt collection.

"(1) A nursing facility participating in the medical assistance program shall notify the IME revenue collection unit upon the death of a member residing in the facility by submitting Form 470-4331, Estate Recovery Program Nursing Home Referral.

"(2) Upon receipt of Form 470-4331 or a report of a member's death through other means, the IME revenue collection unit will use Form 470-4339, Medical Assistance Debt Response, to request a statement of the member's assets from the member's personal representative. The representative shall sign and return Form 470-4339 indicating whether assets remain and, if so, what the assets are and what higher priority expenses exist. EXCEPTION: The procedures in this subparagraph are not necessary when a probate estate has been opened, because probate procedures provide for an inventory, an accounting, and a final report of the estate."

- Paragraphs "f" through "j" are relettered "g" through "k," and the cross reference in relettered paragraph "h" is corrected to refer to paragraph "g."

The Council on Human Services adopted this amendment on December 13, 2006.

This amendment is intended to implement Iowa Code section 249A.5, subsection 2.

This amendment shall become effective on March 1, 2007.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of this amendment [76.12(7)] is being omitted. With the exception of the changes noted above, this amendment is identical to that published under Notice as **ARC 5285B**, IAB 8/2/06.

[Filed 12/13/06, effective 3/1/07]
[Published 1/3/07]

[For replacement pages for IAC, see IAC Supplement 1/3/07.]

ARC 5653B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services amends Chapter 176, "Dependent Adult Abuse," Iowa Administrative Code.

These amendments do the following:

- Give the Department's protective service supervisors sole authority to approve extensions of time for completing dependent adult abuse reports. Under current practice, a protective service worker must contact the Central Abuse Registry to receive approval for an extension, complete a form, have the form signed by the supervisor after the Registry ap-

proves the extension, and attach the form to the printed copy of the report.

- Rescind the subrule regarding access to dependent adult abuse information. This subrule repeats policy from the Iowa Code and is, therefore, unnecessary. The new subrule will reference Iowa Code section 235B.6 for detailed access policies.
- Clarify when the Department will not release the identity of the person who made the report of dependent adult abuse. People who make reports of dependent adult abuse and the dependent adults who are abused will be safer from retaliation from the person who is responsible for the abuse if it is clear that the Department will not divulge the name of the person who made the report of abuse. The identity of the reporter may be released when the Department determines that release would not be detrimental to the reporter.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on September 27, 2006, as **ARC 5392B**. The Department received one comment on the Notice of Intended Action from the American Civil Liberties Union regarding the confidentiality of the reporter's identity. In response to this comment, the Department has agreed to change subrule 176.10(3) to read as follows:

"**176.10(3)** Approval of requests. The department shall grant access to dependent adult abuse information as authorized by Iowa Code section 235B.6. Upon approval of any request for dependent adult abuse information authorized by this rule, the department may withhold the name of the person who made the report of dependent adult abuse when the department finds that the disclosure of the person's identity would be detrimental to the person's interest."

These amendments do not provide for waivers in specified situations, as these amendments confer a benefit by streamlining the extension process and by clarifying the Department's policy regarding release of the name of an informant. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

The Council on Human Services adopted these amendments on December 13, 2006.

These amendments are intended to implement Iowa Code chapter 235B.

These amendments shall become effective on March 1, 2007.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [176.6(5), 176.10(3)] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 5392B**, IAB 9/27/06.

[Filed 12/13/06, effective 3/1/07]
[Published 1/3/07]

[For replacement pages for IAC, see IAC Supplement 1/3/07.]

ARC 5654B

LABOR SERVICES DIVISION[875]

Adopted and Filed

Pursuant to the authority of Iowa Code subsection 88A.3, the Labor Commissioner hereby amends Chapter 61, "Administration—Amusement Parks and Rides Division," and Chapter 62, "Safety Rules for Amusement Parks and Rides," Iowa Administrative Code.

The amendments change the chapter titles of both chapters and change one definition to make the rules more consistent with Iowa Code chapter 88A. The proposed amendment to subrule 62.2(9) excludes the blowers of inflatable rides from the rule that requires an electrical disconnect switch be located within reach of the operator and changes the language to more closely parallel standard industry usage.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 8, 2006, as **ARC 5534B**. No public comments were received. No changes have been made from the Notice of Intended Action.

The purposes of these amendments are to implement legislative intent and protect the health and safety of ride operators and the public.

No waiver provision is contained in these rules as there is an applicable waiver provision in 875—Chapter 1.

These amendments are intended to implement Iowa Code chapter 88A.

These amendments will become effective on February 7, 2007.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Chs 61, 62] is being omitted. These amendments are identical to those published under Notice as **ARC 5534B**, IAB 11/8/06.

[Filed 12/13/06, effective 2/7/07]
[Published 1/3/07]

[For replacement pages for IAC, see IAC Supplement 1/3/07.]

ARC 5643B

REVENUE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code section 421.14, the Department of Revenue hereby amends Chapter 10, "Interest, Penalty, Exceptions to Penalty, and Jeopardy Assessments," Iowa Administrative Code.

Notice of Intended Action was published in IAB Vol. XXIX, No. 10, p. 618, on November 8, 2006, as **ARC 5524B**.

Iowa Code section 421.7 requires the Director of Revenue to determine and publish the interest rate for each calendar year. The Director has determined that the rate of interest on interest-bearing taxes shall be 10 percent for the calendar year 2007 (0.8% per month). The Department will also pay interest at the 10 percent rate on refunds.

This amendment is identical to that published under Notice of Intended Action.

REVENUE DEPARTMENT[701](cont'd)

This amendment will become effective February 7, 2007, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

This amendment is intended to implement Iowa Code section 421.7.

The following amendment is adopted.

Amend rule 701—10.2(421) by adding the following **new** subrule:

10.2(26) Calendar year 2007. The interest rate upon all unpaid taxes which are due as of January 1, 2007, will be 10 percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 2007. In addition, this interest will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 2007. This interest rate of 10 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 2007.

[Filed 12/13/06, effective 2/7/07]
[Published 1/3/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/3/07.

ARC 5642B

REVENUE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Department of Revenue hereby adopts amendments to Chapter 39, "Filing Return and Payment of Tax," Chapter 40, "Determination of Net Income," Chapter 42, "Adjustments to Computed Tax," Chapter 43, "Assessments and Refunds," Chapter 46, "Withholding," Chapter 48, "Composite Returns," Chapter 52, "Filing Returns, Payment of Tax and Penalty and Interest," and Chapter 58, "Filing Returns, Payment of Tax, Penalty and Interest, and Allocation of Tax Revenues," Iowa Administrative Code.

Item 1 amends subrule 39.1(7) to update the list of refundable individual income tax credits.

Item 2 amends subrule 39.2(4) to update the cross references to Iowa Code sections relating to tax credits.

Items 3, 4, 5 and 6 amend subrules 39.4(7), 39.5(10), 39.5(11) and 39.6(3) to strike references to "unmarried heads of household" to match the definition of "head of household" for federal tax purposes.

Item 7 amends rule 701—40.3(422) to update the list of bonds issued by the state and its political subdivisions for which interest is exempt for both federal and Iowa income tax purposes.

Item 8 amends subrules 40.38(8) and 40.38(13) to strike references to "employed in a business" for purposes of qualifications for the Iowa capital gain deduction, and Item 9 amends the implementation clause for rule 701—40.38(422).

Items 10, 11, 12 and 13 amend rule 701—42.1(422) and subrules 42.2(6), 42.2(11) and 42.11(2) to update the cross references to Iowa Code sections relating to tax credits.

Item 14 amends rule 701—42.12(422) to provide that the tax credit in Iowa Code section 422.12B must be subtracted before calculating the franchise tax credit. Item 14 also amends the implementation clause for this rule.

Item 15 amends subrule 42.13(2) and the implementation clause for rule 701—42.13(15E) to provide that the Department of Revenue will issue the replacement tax credit certificate when the eligible housing business investment tax credit for individual income tax is transferred effective July 1, 2006.

Item 16 amends subrule 42.14(2) to correct a cross reference to an Iowa Code section.

Item 17 amends subrule 42.15(6) and the implementation clause for rule 701—42.15(422) to provide that the Department of Revenue will issue the replacement tax credit certificate when the historic preservation and cultural and entertainment district tax credit for individual income tax is transferred effective July 1, 2006.

Item 18 amends rule 701—42.20(15E) and the implementation clause to provide for changes to the endow Iowa tax credit for individual income tax.

Items 19 and 20 amend subrules 43.4(6) and 43.4(7) to update the applicable dates for the keep Iowa beautiful fund checkoff and the volunteer firefighter preparedness fund checkoff.

Item 21 adopts new subrules 43.4(8) and 43.4(9) and updates the implementation clause for rule 701—43.4(68A, 422,456A) to provide for the new individual income tax checkoffs for the veterans trust fund and the joint keep Iowa beautiful fund and volunteer firefighter preparedness fund.

Item 22 amends subrule 46.3(2) to update the new income thresholds for the child and dependent care tax credit.

Item 23 adopts new rule 701—46.10(403) to provide for the targeted jobs withholding tax credit.

Item 24 amends subrule 48.9(2) to update the cross references to Iowa Code sections relating to tax credits.

Item 25 amends subrule 52.15(2) and the implementation clause for rule 701—52.15(15E) to provide that the Department of Revenue will issue the replacement tax credit certificate when the eligible housing business investment tax credit for corporation income tax is transferred effective July 1, 2006. This is similar to the change in Item 15.

Item 26 amends subrule 52.17(2) to correct a cross reference to an Iowa Code section.

Item 27 amends subrule 52.18(6) and the implementation clause for rule 701—52.18(422) to provide that the Department of Revenue will issue the replacement tax credit certificate when the historic preservation and cultural and entertainment district tax credit for corporation income tax is transferred effective July 1, 2006. This is similar to the change in Item 17.

Item 28 amends rule 701—52.23(15E) and the implementation clause to provide for changes to the endow Iowa tax credit for corporation income tax. This is similar to the change in Item 18.

Item 29 amends subrule 58.8(2) and the implementation clause for rule 701—58.8(15E) to provide that the Department of Revenue will issue the replacement tax credit certificate when the eligible housing business investment tax credit for franchise tax is transferred effective July 1, 2006. This is similar to the change in Items 15 and 25.

Item 30 amends rule 701—58.13(15E) and the implementation clause to provide for changes to the endow Iowa tax credit for franchise tax. This is similar to the change in Items 18 and 28.

Notice of Intended Action was published in IAB Vol. XXIX, No. 10, p. 619, on November 8, 2006, as **ARC 5527B**.

Since publication of the Notice of Intended Action, the references to the House Files and Senate Files of 2006 Iowa Acts have been changed to chapters.

These amendments will become effective February 7, 2007, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

These amendments are intended to implement Iowa Code chapter 15E as amended by 2006 Iowa Acts, chapters 1151 and 1158; Iowa Code chapter 403 as amended by 2006 Iowa Acts, chapter 1141; Iowa Code chapter 422 as amended by 2006 Iowa Acts, chapters 1110, 1158, 1159, 1179, and 1182; and Iowa Code section 463C.12 as amended by 2006 Iowa Acts, chapter 1004.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Chs 39, 40, 42, 43, 46, 48, 52, 58] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 5527B**, IAB 11/8/06.

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[Published 1/3/07]

[For replacement pages for IAC, see IAC Supplement 1/3/07.]

ARC 5644B

REVENUE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code chapter 17A and sections 452A.59, 452A.76, 453A.25 and 453A.49, the Department of Revenue hereby adopts amendments to Chapter 67, "Administration," Chapter 68, "Motor Fuel and Undyed Special Fuel," Chapter 82, "Cigarette Tax," and Chapter 83, "Tobacco Tax," Iowa Administrative Code.

Item 1 amends rule 701—67.1(452A) by changing several definitions to correspond to Iowa Code chapter 452A.

Item 2 amends rule 701—67.1(452A) by adding new definitions added to Iowa Code chapter 452A.

Item 3 amends the implementation clause for rule 701—67.1(452A).

Item 4 amends rule 701—67.6(452A) by requiring nonterminal storage facilities with at least 100,000 gallons of product to file reports by electronic transmission.

Item 5 amends subrule 68.8(14) to state that no refund is allowable for fuel lost as a result of normal leakage or theft. Leakage resulting from a major accident or catastrophe is subject to refund.

Item 6 amends rule 701—68.15(452A) by requiring terminal and nonterminal storage facilities to provide additional information on reports filed with the Department. The rule is also amended by requiring these licensees to file reports with the Department by electronic transmission beginning September 1, 2006.

Item 7 amends subrule 82.5(2) to give the Department the authority to send cigarette stamps by registered mail rather than certified mail and to give the Department the option to send stamps by FedEx, USPS, or other comparable shipping service.

Item 8 amends subrule 82.10(2) to remove outdated language.

Item 9 amends rule 701—83.1(453A) by requiring a tobacco retailer to obtain a retail cigarette/tobacco permit.

Notice of Intended Action was published in IAB Vol. XXIX, No. 10, p. 625, on November 8, 2006, as **ARC 5526B**. These amendments are identical to those published under Notice of Intended Action.

These amendments will become effective February 7, 2007, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

These amendments are intended to implement Iowa Code chapter 452A as amended by 2006 Iowa Acts, chapter 1142, and Iowa Code chapters 452A and 453A.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [67.1, 67.6, 68.8(14), 68.15, 82.5(2), 82.10(2), 83.1] is being omitted. These amendments are identical to those published under Notice as **ARC 5526B**, IAB 11/8/06.

[Filed 12/13/06, effective 2/7/07]
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[For replacement pages for IAC, see IAC Supplement 1/3/07.]

ARC 5652B

STATE PUBLIC DEFENDER[493]

Adopted and Filed

Pursuant to the authority of Iowa Code section 13B.4(8), the State Public Defender amends Chapter 7, "Definitions," Chapter 12, "Claims for Indigent Defense Services," and Chapter 13, "Claims for Other Professional Services," Iowa Administrative Code.

These amendments modify definitions and rules concerning submission of claims for indigent defense services.

Notice of Intended Action to solicit public comment on these amendments was published in the November 8, 2006, Iowa Administrative Bulletin as **ARC 5540B**.

A public hearing was held and no comments were received.

These amendments, adopted by the State Public Defender on December 13, 2006, are identical to the amendments contained in the Notice of Intended Action.

These amendments will become effective February 7, 2007.

These amendments are intended to implement Iowa Code chapters 13B, 232 and 815.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [7.1, 12.1, 12.2, 12.3, 12.5, 12.6, 13.2, 13.6] is being omitted. These amendments are identical to those published under Notice as **ARC 5540B**, IAB 11/8/06.

[Filed 12/13/06, effective 2/7/07]
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[For replacement pages for IAC, see IAC Supplement 1/3/07.]

ARC 5640B

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation, on December 13, 2006, adopted an amendment to Chapter 511, "Special Permits for Operation and Movement of Vehicles and Loads of Excess Size and Weight," Iowa Administrative Code.

Notice of Intended Action for this amendment was published in the November 8, 2006, Iowa Administrative Bulletin as **ARC 5509B**.

The purpose of this amendment is to allow the full 12 months of use of the $300 annual oversize/overweight permit when the original permitted vehicle is unable to operate the entire duration because it has been damaged in an accident, junked or sold. Currently, the motor carrier has to purchase a new permit for the replacement vehicle.

This amendment does not provide for waivers. Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

This amendment is identical to the one published under Notice of Intended Action.

This amendment is intended to implement Iowa Code chapter 321E.

This amendment will become effective February 7, 2007.

Rule-making action:

Amend subrule 511.5(2) as follows:

511.5(2) Annual oversize/overweight permit. A fee of $300 shall be charged for each annual oversize/overweight permit, payable prior to the issuance of the permit. *Transfer of current annual oversize/overweight permit to a replacement vehicle may be allowed when the original vehicle has been damaged in an accident, junked or sold.*

[Filed 12/13/06, effective 2/7/07]
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ARC 5641B

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.10 and 307.12 and 2006 Iowa Acts, chapter 1179, section 55, the Department of Transportation, on December 13, 2006, adopted Chapter 924, "Public Transit Infrastructure Grant Program," Iowa Administrative Code.

Notice of Intended Action for these rules was published in the November 8, 2006, Iowa Administrative Bulletin as **ARC 5523B**.

The purpose of this rule making is to adopt a new chapter concerning the Public Transit Infrastructure Grant Fund that was created by 2006 Iowa Acts, chapter 1179, section 55. The Public Transit Infrastructure Grant Program will provide funding for improvement of the vertical infrastructure of Iowa's designated public transit systems.

These rules do not provide for waivers. Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

These rules are identical to those published under Notice of Intended Action.

These rules are intended to implement Iowa Code sections 8.57 and 324A.1 and 2006 Iowa Acts, chapter 1179, section 55.

These rules will become effective February 7, 2007.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 924] is being omitted. These rules are identical to those published under Notice as **ARC 5523B**, IAB 11/8/06.

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